

Volume 8

Pages 1705 - 2059

STATE OF NEW HAMPSHIRE
DEPARTMENT OF STATE BUREAU OF SECURITIES REGULATIONS

No. C-2011000036

In the Matter of:

Local Government Center, Inc., et al.

BEFORE DONALD E. MITCHELL, ESQUIRE
PRESIDING OFFICER

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REPORT OF PROCEEDINGS

May 9, 2012

9:17 a.m.

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New Hampshire State Archives and Genealogical
Public Research Room
71 South Fruit Street
Concord, New Hampshire 03301

Court Reporter: Pamela J. Carle, LCR, RPR, CRR

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By Mr. Hillman 2013

CROSS-EXAMINATION

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REDIRECT EXAMINATION

By Mr. Saturley 2055

RE-CROSS-EXAMINATION

By Mr. Volinsky 2058

EXHIBITS IN EVIDENCE

LGC 408 1764

LGC 265 2007

LGC 463 2016

LGC 464 2022

LGC 264 2042

1 THE PRESIDING OFFICER: Good morning,
2 ladies and gentlemen. This is day eight in
3 testimony. We have a couple preliminary matters
4 that I'm going to deal with, and the first -- for
5 the first matter I will recognize Mr. Saturley to
6 address the issue of conditional -- or what has
7 been a conditional objection on certain exhibits
8 of the Bureau of Securities Regulation I think
9 going back to the first day. Thank you for your
10 work, Mr. Saturley. Please approach.

11 MR. SATURLEY: Thank you, Mr. Mitchell,
12 and good morning. You've asked me to address the
13 topic, as I understand it, of the bureau's request
14 to admit in full their Exhibits 1 through 9, which
15 are particular charts based on particular
16 information.

17 It's my understanding after discussion
18 with the bureau that they are not moving for the
19 admission of Exhibits 10 and 11. So I'm going
20 to --

21 THE PRESIDING OFFICER: Is that
22 correct, Mr. Volinsky?

23 MR. VOLINSKY: Yes.

1 THE PRESIDING OFFICER: The answer was
2 yes. Please proceed.

3 MR. SATURLEY: So I'm going to restrict
4 my comments to Exhibits 1 through 9. And as
5 you've noted, we've had a conditional objection to
6 that, so I want to address that.

7 There are two topics that I'd like to
8 address as part of this. No. 1, there are some
9 errors in the data that makes up at least two of
10 these charts, and the particular type of objection
11 I will address briefly, and then there's a larger
12 topic that I will move to afterwards. First let
13 me identify the errors --

14 THE PRESIDING OFFICER: Please.

15 MR. SATURLEY: -- that I think we have
16 discovered today. And I will note that the
17 graphical representations on which the stickers
18 are attached as these exhibits were not given to
19 us until the Friday afternoon immediately
20 preceding the commencement of the proceeding on
21 Monday when we began, April 30th, so that's when
22 we had them.

23 THE PRESIDING OFFICER: Hence the

1 conditional?

2 MR. SATURLEY: Yes.

3 THE PRESIDING OFFICER: Thank you.

4 MR. SATURLEY: With regards to BSR
5 No. 5, at this point we've been able to detect
6 that there is at least one error in that one of
7 the years that is represented on this chart --

8 THE PRESIDING OFFICER: Go ahead.

9 MR. SATURLEY: -- a chart for 2002,
10 which appears in the middle of the chart, the
11 income statement section laid out for the Property
12 Liability Trust is wrong. When we compare the
13 numbers that appear on the chart to our audited
14 financial statements for Property Liability Trust
15 for 2002, they do not match to our numbers for
16 that particular statement.

17 THE PRESIDING OFFICER: And how do they
18 differ, sir?

19 MR. SATURLEY: I believe they come -- I
20 am told that they come from -- they must come from
21 a different year.

22 THE PRESIDING OFFICER: I understand,
23 but what would I find in your exhibits that would

1 tell me that the figures are incorrect? In other
2 words, what are your figures, sir?

3 MR. SATURLEY: My figures appear to
4 suggest that they've copied numbers from 2001. So
5 if you were to track back to the Property
6 Liability Trust financial statements for 2001,
7 those are the numbers that appear in this
8 representation of what took place in 2002.

9 THE PRESIDING OFFICER: And are those
10 numbers part of any exhibits of LGC that you're
11 aware of at this time?

12 MR. SATURLEY: I believe that I could
13 track to a Property Liability Trust financial
14 statement for 2001.

15 Can you find that for me, please?

16 THE PRESIDING OFFICER: We can do that
17 later as an administrative item.

18 MR. SATURLEY: Yes.

19 THE PRESIDING OFFICER: You understand
20 that my intent is just so that I have both
21 references.

22 MR. SATURLEY: Yes, sir. And we'll get
23 back to you momentarily.

1 THE PRESIDING OFFICER: Momentarily or
2 during one of the recesses, I don't care.

3 MR. SATURLEY: Okay. With regard to
4 BSR Exhibit 6.

5 MR. VOLINSKY: Mr. Mitchell.

6 THE PRESIDING OFFICER: Mr. Volinsky.

7 MR. VOLINSKY: Just so I'm following.

8 THE PRESIDING OFFICER: Yes, sir.

9 MR. VOLINSKY: Could Mr. Saturley just
10 state the first number that he thinks is wrong in
11 BSR 5, just so I know exactly what number that is?

12 THE PRESIDING OFFICER: Okay, let me
13 state my understanding, that way we accomplish two
14 things at once.

15 MR. SATURLEY: Sure.

16 THE PRESIDING OFFICER: That there is a
17 question as to accuracy of numbers on BSR 5 that
18 are attributed to the property trust in the
19 vertical column 2002 beginning at the income
20 statement side.

21 MR. VOLINSKY: And then all the numbers
22 from there to the bottom of that column, is
23 that --

1 THE PRESIDING OFFICER: That was the
2 inference that I took from his representation.

3 MR. VOLINSKY: Okay.

4 THE PRESIDING OFFICER: Mr. Saturley,
5 could you help me out, please?

6 MR. SATURLEY: I do not have the
7 entire -- I have a summary of the data that's been
8 compared, and my understanding is that the income
9 section of this column comes from some other
10 place, are perhaps the 2001 figures.

11 THE PRESIDING OFFICER: And so your
12 belief at this time, although we will -- you know,
13 this is something -- this is an item that needs to
14 be parsed out, and I think the attorneys in the
15 room understand the reasons for that, and to
16 others I'll just represent that because they're
17 specific figures, and because there are
18 extrapolations and interpretations attributed to
19 these figures, it's important that I at least know
20 what each side is saying what the exact figure is.

21 And I will allow through the course --
22 this is a continuing clarification and so please
23 don't feel pressured, just we're telling all of

1 the support people what we'll be looking for
2 between now, again, and the end of the
3 proceedings. Is that all right, Mr. Saturley?

4 MR. SATURLEY: Fine with me.

5 THE PRESIDING OFFICER: Okay, please
6 proceed, then, to direct my attention.

7 Mr. Volinsky, is that sufficient at
8 this time?

9 MR. VOLINSKY: It is at this time.

10 THE PRESIDING OFFICER: It's a work in
11 progress, I understand.

12 MR. VOLINSKY: The only concern that I
13 have is if I need to call a witness to rebut an
14 assertion, I'm running out of time.

15 THE PRESIDING OFFICER: I understand
16 that. And we will make that reservation, and with
17 all due respect, I will protect Mother's Day.

18 Please proceed, Mr. Saturley.

19 MR. SATURLEY: Thank. BSR 6, the next
20 chart that they have submitted, my understanding
21 is that, again, under the property trust column
22 for 2006 that at the -- nearly at the bottom of
23 the recitation of the data there's a line that

1 says I-N-C, slash, D-E-C, which I take it to mean
2 increase, decrease in net assets.

3 THE PRESIDING OFFICER: The 963 figure?

4 MR. SATURLEY: Yes, exactly.

5 THE PRESIDING OFFICER: Thank you.

6 MR. SATURLEY: The 963 figure is
7 reversed. It should be a negative number.

8 THE PRESIDING OFFICER: And in
9 traditional style that the negative would be shown
10 with the parentheses?

11 MR. SATURLEY: Correct. Those are the
12 technical errors that we have identified at this
13 point with regards to these charts.

14 THE PRESIDING OFFICER: You had a
15 second -- a second nature of objection?

16 MR. SATURLEY: I do.

17 THE PRESIDING OFFICER: Conditional
18 objection. And, again, to the extent that you
19 can, at this point in the proceedings, I would ask
20 you to be as specific as you can.

21 MR. SATURLEY: Yes.

22 THE PRESIDING OFFICER: And to avoid
23 argument, to the best of your ability.

1 MR. SATURLEY: To the best of my -- to
2 the best of my ability.

3 THE PRESIDING OFFICER: Thank you.

4 MR. SATURLEY: And it in part develops
5 from the potential significance of the errors that
6 I've just described, and in part develops my
7 continuing objection to the introduction of the
8 charts as a whole.

9 And the point is this, Mr. Mitchell.
10 We did not have any specific testimony in any
11 depth or really at all with regards to many of
12 these charts, and including Exhibit 5 and
13 Exhibit 6, so I don't know why they're being
14 submitted.

15 I don't know what significance is being
16 attributed to them. I don't know what
17 significance you will put on them. Therefore,
18 while I can identify the particular technical
19 error, I'm not on notice as to what significance
20 is being assigned to the data, and therefore I
21 can't know what to do in rebutting it.

22 All I can say is, well, that's wrong,
23 but I don't know whether that's significant or

1 not, which is why I'm objecting on a second ground
2 to the admission of the charts.

3 THE PRESIDING OFFICER: And that ground
4 simply is?

5 MR. SATURLEY: The ground is whether or
6 not they have any significance, whether they have
7 any relevance.

8 THE PRESIDING OFFICER: Okay, sure.

9 MR. SATURLEY: To the case.

10 THE PRESIDING OFFICER: All right.

11 MR. SATURLEY: Not having had the
12 charts introduced through a live witness putting
13 them in any context or assigning them any
14 particular significance in the bureau's case, I'm
15 in no position to rebut them or to understand why
16 the bureau is even submitting them.

17 I don't know what significance you'll
18 put on these two charts or the others, and so
19 therefore I am at a disadvantage in terms of
20 understanding why they're there.

21 THE PRESIDING OFFICER: Okay.

22 MR. SATURLEY: The other charts have --
23 while I understand, and I will accept -- I

1 accepted at the time they were proffered, I heard
2 Mr. Cuotu say that he developed the information
3 and put it on a spreadsheet, I heard that, but I
4 didn't hear particularly where he developed the
5 information from, nor why he did it. He did
6 linger on -- my recollection is he lingered on
7 Exhibit 1. But the other exhibits I do not recall
8 any particular testimony on.

9 Here is an example of the -- my problem
10 with that. While I accept that Mr. Cuotu went and
11 got the information from certain of our financial
12 statements --

13 THE PRESIDING OFFICER: Right.

14 MR. SATURLEY: -- and while I have
15 identified only two technical transposition
16 errors, or whatever you want to call them, I do
17 note that some of the information comes from some
18 categories, and some of the information comes from
19 other categories.

20 For instance, when Mr. Cuotu collected
21 information on contributions, meaning how much
22 revenue would a LGC entity expect to collect in a
23 particular year, he used an accrual figure,

1 meaning he would collect not only everything that
2 came in, but what was expected to come in.

3 THE PRESIDING OFFICER: I understand.

4 MR. SATURLEY: When he compared that to
5 a claims paid number, outflow, he would draw that
6 from a cash column, not a cash plus accrued and
7 anticipated to be paid.

8 Now, again, I think that he's collected
9 accurate numbers, but, to me, he's comparing -- if
10 he -- if he had testified as to a particular
11 comparison and why he wanted to do it, had he done
12 that, I would have known what he was doing it for,
13 and I would have cross-examined him pointing out
14 that this is apples and this is oranges.

15 But not having done that as a live
16 witness, I don't really know why he did it. I can
17 accept that those particular numbers supporting
18 Exhibit 1 are accurate, but he didn't argue why he
19 was doing it, and therefore I was not on notice.

20 So, my objection then is to the numbers
21 may be accurate, but he didn't testify as to why
22 he did it, therefore I couldn't cross-examine him.

23 Putting it in as a full exhibit allows

1 the bureau later on to potentially argue the
2 significance, whatever they want to do with it.
3 And that is why I object to them being full
4 exhibits.

5 They may be accurate, but where they
6 come from was entirely under Mr. Cuotu's control,
7 and he didn't expose that to us or to you in
8 testimony so that I could cross-examine him on it.
9 I don't know why he did it this way.

10 I don't know what the bureau is going
11 to do with it. I won't know until they file their
12 post trial brief, and so therefore that's an
13 unfair use of this particular data and these
14 exhibits, and that's my objection.

15 THE PRESIDING OFFICER: Thank you,
16 Mr. Saturley. Mr. Volinsky, would you like to say
17 something? You want me just to --

18 MR. VOLINSKY: There's just one point I
19 would make for the record, only.

20 THE PRESIDING OFFICER: Sure.

21 MR. VOLINSKY: I think the arguments
22 are pretty well known on this point. If you look
23 at BSR Exhibits 5, 6 and 7, you will see at the

1 top of each chart there is a heading that says
2 Exhibit B, Exhibit C, Exhibit D.

3 THE PRESIDING OFFICER: I noticed
4 those.

5 MR. VOLINSKY: Right. Those references
6 are there because those charts were a part of
7 Mr. Cuotu's report which was delivered to the
8 other side February 17 in advance of a ten-hour
9 deposition of Mr. Cuotu.

10 So, if there was anything that the
11 Local Government Center and the other respondent
12 lawyers didn't understand, they had ten hours of
13 deposition to ask questions about it. That's my
14 only additional comment.

15 THE PRESIDING OFFICER: Thank you.
16 With respect to the second portion of your
17 objection, Mr. Saturley, I'm denying that. My
18 recollection of the record is a little different
19 than yours. But, as we know, we have just the
20 rough dailies at this time.

21 However, I do believe that the source
22 of the data was from the respondent. I do believe
23 that there's been adequate opportunity both in

1 reviewing the report, the deposition -- I didn't
2 know the deposition went for ten hours, but,
3 nonetheless, a deposition, your ability to
4 cross-examine this morning -- I mean when
5 Mr. Cuotu was here, and the witness, as you know,
6 and I believe it was just a miss -- a
7 misstatement, but the witness doesn't have to
8 argue, the witness is here to provide a fact to
9 you on cross-examination, and to reveal and
10 defend, if you will, his opinion.

11 And what else do I have here. I think
12 I've tried to be instructive because this is an
13 ongoing objection and give you a little more than
14 just a denial, and that's why I did it.

15 I understand that both of you need
16 certain things on the record, and I respect that,
17 but I think there was fair opportunity, and I'm
18 going to, as I said, deny that second portion of
19 the objection.

20 I've made notes as to your first
21 grounds, and we're going to continue to work on
22 that as we proceed here, mindful of Mr. Volinsky's
23 concern that if, in fact, it's been revealed that

1 there's been a transpositional error, then that
2 will have to be addressed.

3 And I suppose on the record, I will ask
4 both counsel, now that I have ruled in denying
5 that second ground, the more universal, if you'll
6 allow me that term, objection, as to Exhibit 5 and
7 6, where we believe there are actual inaccuracies
8 in the figures, I'm going to ask counsel to,
9 again, endeavor during the course of this day to
10 resolve those differences, and in the event that
11 they cannot be resolved, I'm going to ask counsel
12 to consider the option of obtaining, oh, shall we
13 call them dueling affidavits during the period of
14 time with which I will keep the record open for
15 your post hearing submissions.

16 And that's just by way of a suggestion
17 for a different way that we might deal with it
18 should we not be able to resolve it today.

19 Anything further from either counsel?
20 Mr. Saturley?

21 MR. SATURLEY: No, thank you,
22 Mr. Mitchell.

23 THE PRESIDING OFFICER: Mr. Volinsky?

1 MR. VOLINSKY: No, thank you.

2 THE PRESIDING OFFICER: We have another
3 preliminary matter -- preliminary meaning prior to
4 getting to the merits, it's not in weight or
5 importance -- and at this time I would recognize
6 Mr. Howard.

7 And, Mr. Howard, would you please state
8 the reason for your presentation this morning?

9 MR. HOWARD: Yes, thank you,
10 Mr. Mitchell. And I am, on behalf of Mr. Curro,
11 taking you up on your invitation to renew our
12 motions to dismiss at any point in the
13 proceedings.

14 I want to make clear for the record
15 that I am not resting my defense case, but I am
16 renewing the motion to dismiss for these reasons.

17 We are now into day 8. There has been
18 no additional evidence proffered by the bureau
19 against Mr. Curro that he has done anything wrong
20 as identified in counts 1 through 5 of the amended
21 petition.

22 I would point out that yesterday it was
23 elicited that Mr. Curro voted against the

1 promissory note that was established between
2 workers' comp. and HealthTrust. To the extent --
3 and I do not concede that that note is relevant in
4 any way -- but to the extent that the bureau
5 believes that the establishment of that note was
6 improper under 5-B, Mr. Curro voted against it and
7 can't be held liable for it.

8 With respect to counts 1 and 2, when I
9 made my motion to dismiss on Friday, one of the
10 arguments I made was that he had advice of counsel
11 and relied on that counsel for every decision that
12 was made. Mr. Volinsky stood up and objected that
13 advice of counsel is an affirmative defense which
14 hasn't been established.

15 Yesterday, Attorney McCue testified
16 unequivocally that the board acted, and therefore
17 Mr. Curro -- to the extent there's proof that he
18 voted for any of these things -- the board acted
19 after soliciting Mr. McCue's advice and acted
20 consistent with that advice. And in Mr. McCue's
21 opinion and his view, the board never acted
22 contrary to his advice.

23 With respect to the particular issues

1 of return of surplus that are issues identified in
2 count 2 under 5-B, Mr. McCue said an opinion was
3 solicited by me, I provided it to the board, and
4 they acted in accordance with my advice.

5 To my knowledge, the reason I'm
6 renewing my motion now, the bureau has not
7 disclosed any expert that will contradict that
8 testimony, nor am I aware of any fact witness who
9 will contradict that testimony.

10 And I think it's fair that the hearing
11 examiner now can approach the bureau when they
12 object to this motion and say, make me a proffer
13 that that testimony is going to be contradicted.

14 Because if it isn't, it continues to be
15 both unfair and a colossal waste of resources for
16 Mr. Curro to remain a defendant in this case. A
17 waste of resources, I might add, that's been
18 propagated by the Secretary of State's office in
19 keeping me in this case.

20 Finally, I would ask you to revisit
21 your ruling on counts 3, 4 and 5, the securities
22 ruling, with respect to Mr. Curro. On count 3, I
23 really would ask you to take a closer look. He is

1 not named as a defendant in that case but must
2 continue -- in that count, but must continue to
3 defend it.

4 I would at least like a concession by
5 the bureau that he's not exposed to liability on
6 count 3, because he's not named, nor could he be
7 given the nature of count 3.

8 Finally, with count 4, there continues
9 to be no evidence presented at this hearing that
10 Mr. Curro made a material contribution as a
11 director to any of the actions that might
12 constitute a security.

13 And, finally, yesterday we saw that
14 there continues to be no evidence that he acted
15 with any fraud or deceit, and, in fact, the
16 allegations that are made in count 5 about
17 information that was withheld from the members we
18 saw from the annual reports that that information
19 was, in fact, disclosed.

20 For those reasons, I'd ask that you
21 dismiss Mr. Curro this morning. Thank you.

22 THE PRESIDING OFFICER: Excuse me,
23 Mr. Howard.

1 MR. HOWARD: Yes.

2 THE PRESIDING OFFICER: For point of
3 clarification, at the very beginning of your
4 remarks you made a reference to specific testimony
5 that you thereafter referenced as that testimony.
6 Can you see that from your notes?

7 MR. HOWARD: I'm not sure which part
8 you're referring to.

9 THE PRESIDING OFFICER: It's the very
10 beginning, and then you followed up by thereafter
11 saying that that testimony, and I'm going to --

12 MR. HOWARD: Hum.

13 THE PRESIDING OFFICER: Then start
14 over, if you would, because --

15 MR. HOWARD: Well, maybe you were
16 referring to the testimony concerning the
17 establishment of the promissory note between
18 workers' comp. and HealthTrust?

19 THE PRESIDING OFFICER: That was one
20 piece, and I just want to make sure I got the
21 promissory note. Was there a second piece of
22 testimony that you intended by that testimony?

23 MR. HOWARD: I don't believe so.

1 Except I did say that the testimony was that
2 Mr. Curro voted against that note.

3 THE PRESIDING OFFICER: Yes.

4 MR. HOWARD: So to the extent that the
5 note is relevant -- and I don't concede that it
6 is, because I don't think it's relevant at all --

7 THE PRESIDING OFFICER: I understand.

8 MR. HOWARD: -- he can't be held liable
9 for the note being some evidence of or itself
10 being a violation of 5-B.

11 THE PRESIDING OFFICER: Thank you,
12 Mr. Howard.

13 MR. HOWARD: Does that answer your
14 question?

15 THE PRESIDING OFFICER: It does answer
16 my question, and I hope you appreciate why I'm
17 being so attentive.

18 MR. HOWARD: Thank you.

19 THE PRESIDING OFFICER: I would also
20 comment that certainly it's not within my
21 authority to withdraw charges for the BSR. So to
22 the extent that that's accurate, you can say that
23 they're keeping you in the case, but I do want

1 also to state that with respect to you being in
2 the case, as you know from my prior denials, I as
3 the presiding officer am the one keeping your
4 client in the case, and not the Secretary of
5 State.

6 MR. HOWARD: I understand that. What I
7 was asking for was only with respect to count 3,
8 was that they make some representation either to
9 me or to the hearings officer if I am in fact a
10 defendant.

11 They seem to be suggesting that I am in
12 count 3. I read count 3, it doesn't look like I
13 am, but their argument on Friday was I am. Just
14 trying to figure out what I'm defending.

15 THE PRESIDING OFFICER: Understood.

16 MR. HOWARD: Even in day eight I'm
17 still trying to figure out what I'm defending.

18 THE PRESIDING OFFICER: Understood,
19 Mr. Howard. Thank you. Mr. Volinsky? I'm sorry,
20 Mr. Gordon.

21 MR. VOLINSKY: Yeah.

22 THE PRESIDING OFFICER: And you'll see
23 why. And, Mr. Gordon, would you state the purpose

1 for which you address me this morning?

2 MR. GORDON: Yes. I join in that
3 motion on behalf of Ms. Carroll. I will not
4 repeat all the facts set forth. I do highlight a
5 particular piece of relevant evidence for you to
6 consider on this motion at this time that you
7 yourself elicited from Mr. McCue.

8 In reading your motion to -- your order
9 on our motion to dismiss, you said reasonable
10 inferences could be drawn that Ms. Carroll
11 provided legal advice to the entity.

12 THE PRESIDING OFFICER: Yes.

13 MR. GORDON: LGC.

14 THE PRESIDING OFFICER: Yes.

15 MR. GORDON: And you specifically asked
16 Mr. McCue that question.

17 THE PRESIDING OFFICER: Yes, I did.

18 MR. GORDON: And he dramatically
19 answered you, no, she did not. There is no
20 evidence in this case that she provided any legal
21 advice to the entity LGC or any of the trusts.

22 And that is the thread -- the legal
23 thread upon which she remains in counts 1 and

1 count 2, and I would ask that those counts be
2 dismissed for that basis of that testimony that
3 there can be no reasonable inference from anything
4 at this point in time, in addition to Mr. McCue's
5 testimony, that representatives of his law firm
6 attended all committee meetings, all board
7 meetings, and provided advice on the particulars
8 relating to structure of the entity, return of
9 surplus, strategic funding, and the workers' comp.
10 Thank you.

11 THE PRESIDING OFFICER: Thank you,
12 Mr. Gordon. Mr. Gordon, for clarification for me,
13 I understand that you are adopting Mr. Howard's
14 arguments as to counts 3, 4 and 5. You added
15 some -- and 1 and 2, and you've added some
16 additional bases for grounds 1 and 2.

17 MR. GORDON: Correct.

18 THE PRESIDING OFFICER: You are not
19 rising for any purpose of supporting Mr. Howard's
20 motion for dismissal.

21 MR. GORDON: I support it as vigorously
22 as I can.

23 THE PRESIDING OFFICER: Okay, fine. I

1 didn't hear that this morning. I wanted to make
2 sure it was part of your motion.

3 MR. GORDON: It is part of my motion.
4 I just didn't want to repeat his eloquence.

5 THE PRESIDING OFFICER: Thank you,
6 Mr. Gordon. Mr. Volinsky.

7 MR. VOLINSKY: Thank you, your Honor.
8 First we readopt and reassert the arguments that
9 we made at the close of our case when the motion
10 to dismiss was made then.

11 We would further supplement it by first
12 referencing the testimony that Mr. Curro opposed
13 any note to repay the healthcare trust subsidy.
14 In some ways that conduct is worse than assigning
15 a commercially unreasonable note, because through
16 that conduct Mr. Curro asserts that there is no
17 need for workers' comp. to repay the \$17 million
18 at all.

19 So while we question the conduct in
20 assigning a note without interest or terms, we
21 think it's actually worse to make no effort and
22 not to acknowledge the debt from workers' comp. to
23 HealthTrust, which is why I asked about that

1 particular point.

2 With respect to Mr. McCue's
3 representations, Mr. McCue like any other witness
4 is subject to having his credibility questioned.
5 I represent to you that there will be further
6 challenges to his credibility as we complete the
7 rest of the witnesses in this case based on who
8 I'm told are coming as further witnesses. So I
9 would ask you to withhold any judgment based on
10 Mr. McCue's credibility to the extent that he
11 asserts anything on which they rely.

12 Finally, there still has not been
13 testimony by Ms. Carroll or Mr. Curro that they
14 individually relied on anyone's legal advice,
15 because they haven't testified yet, so it's
16 premature to rule on them until you hear from
17 them.

18 Mr. McCue did testify that his one and
19 only client related to this dispute was the Local
20 Government Center. He did not represent Maura
21 Carroll, he did not represent Peter Curro. It
22 would be unusual for a lawyer who doesn't
23 represent individuals to provide legal advice to

1 them.

2 Let me just clarify one point with
3 respect to count 5, which is the third securities
4 related count. Mr. Howard continues to quote two
5 parts of a three-part standard that is in the
6 alternative.

7 That standard provides for action
8 against a person who acts with fraud, deceit, or
9 material omission. And it is really that material
10 omission prong that we are pursuing here.

11 And there is significant testimony, as
12 Mr. Tilsley outlined last Friday, on material
13 omission by LGC, its board members, and as we
14 already know, no one is registered to sell
15 securities. Local Government Center wasn't
16 registered as a broker/dealer, the participation
17 agreements were not registered as securities, so
18 for all those reasons we believe the case should
19 go forward on all those counts against all
20 parties.

21 THE PRESIDING OFFICER: Mr. Volinsky,
22 in your presentation you made reference that
23 neither Mr. McCue nor Mrs. Carroll had testified.

1 Can I take by inference that what you meant to say
2 was Mr. Curro --

3 MR. VOLINSKY: Curro.

4 THE PRESIDING OFFICER: -- and
5 Ms. Carroll?

6 MR. VOLINSKY: Yes.

7 THE PRESIDING OFFICER: Thank you. Any
8 further respondents? Mr. Howard, of course.

9 MR. HOWARD: Thank you, Mr. Mitchell.
10 I do appreciate that, because now based on the
11 argument from the bureau I find myself once again
12 going down the rabbit hole from Alice in
13 Wonderland.

14 A few weeks ago we had a motion to
15 dismiss hearing, and I asked for what are the
16 individual allegations against Mr. Curro, what did
17 he do wrong. And the argument back to you, the
18 representation by the Secretary of State was, he
19 is here as a representative defendant, it's not
20 his individual responsibility, he is here as a
21 representative of the board.

22 And I said, and I've been asking for
23 weeks, what is the legal support for that theory.

1 That one man on a board of 28 or 31 can be a
2 representative defendant. I have yet to receive
3 an answer for that.

4 Now I'm being told he cannot enjoy the
5 advice given to the board by its lawyer because
6 the lawyer wasn't his in his individual capacity.

7 So which is it? Am I here as an
8 individual, or I'm here as this sort of ethereal
9 representative defendant of something? I would
10 just ask the bureau to take a position so I know
11 what to defend. Thank you.

12 THE PRESIDING OFFICER: Thank you,
13 Mr. Howard. Mr. Gordon?

14 MR. GORDON: I'm struck by the ying and
15 the yang as well. And I'll tell you my ying here.

16 THE PRESIDING OFFICER: Okay.

17 MR. GORDON: With regard to the
18 workers' comp. note, the evidence will be that
19 Ms. Carroll, as executive director -- it's
20 already -- it's been an admission, the minutes are
21 in this case --

22 THE PRESIDING OFFICER: And also I
23 believe testified to --

1 MR. GORDON: Yes.

2 THE PRESIDING OFFICER: -- appearing in
3 the daily transcripts. And please continue.

4 MR. GORDON: That she recommended -- or
5 brought to the board's attention, based upon
6 member concerns, as a voice of those member
7 concerns in a member-driven organization, she
8 brought to the board's attention this concern, and
9 the board discussed it. And as part of her
10 dialogue with the board there was discussion about
11 interest. And then the board made the decision
12 that it did.

13 And I'm being told that that's wrong.
14 And what happened with Mr. Curro is, quote, much
15 worse. And I don't know where the wrong is as far
16 as Ms. Carroll is, and concerns, as a legal duty
17 and a breach of a duty, how that falls into place.

18 So based upon what was stated to you by
19 the BSR, I don't believe that what she did could
20 be a breach.

21 THE PRESIDING OFFICER: Thank you,
22 Mr. Gordon. Mr. Volinsky?

23 MR. VOLINSKY: All set.

1 THE PRESIDING OFFICER: Okay. Well,
2 then I'm going to ask you to come up.

3 Mr. Howard has pointed -- or given,
4 shall I say, separate -- would this be
5 appropriate, Mr. Howard, there is some separate
6 significance to count 3, is that correct, in your
7 mind?

8 MR. HOWARD: Yes.

9 THE PRESIDING OFFICER: Very good.
10 Could you address count 3 specifically? If you
11 did in your first presentation this morning, I
12 apologize, but I didn't get it.

13 MR. VOLINSKY: I don't think I did.

14 THE PRESIDING OFFICER: Okay.

15 MR. VOLINSKY: Three is the
16 institutional account?

17 THE PRESIDING OFFICER: I have it as
18 sale of unregistered securities by unlicensed
19 broker-dealers, issuer-dealers, and agents in
20 violation of 421, 6 and 11.

21 MR. VOLINSKY: Right. So a
22 broker-dealer in this context, or a issuer would
23 have to be the Local Government Center entity. An

1 agent of that entity could be parties approving
2 documents such as in this context the
3 participation agreement.

4 But I am aware that there is case law
5 that melds board members with the entity on which
6 they sit. So there is certainly a legal argument
7 that Mr. Curro acts as a board member and is
8 therefore melded on count 3 into the agency on
9 which he sits as a board member.

10 So it could be legally decided that he
11 has no liability on 3 more extensive than his own
12 agency, but that doesn't take him out of 4 and 5.

13 THE PRESIDING OFFICER: And point of
14 clarification, when you use the word "agent" in
15 count 3 -- and I don't want to prolong legal
16 argument, I know -- you know, I will hear all this
17 in your post hearing briefs, but for purposes of
18 this motion and my consideration of it, when you
19 used the word "agent," you're using the definition
20 that appears in the securities statute 421-B, and
21 not some general concept of agency, is that
22 correct?

23 MR. VOLINSKY: Yes, sir.

1 THE PRESIDING OFFICER: Thank you.
2 Okay. I'll take those motions under advisement,
3 gentlemen, as you may have expected, and I don't
4 have that there are any other preliminary motions
5 at this time.

6 If not, Mr. Saturley, on behalf of LGC,
7 would you call your next witness, please?

8 MR. SATURLEY: Thank you, Mr. Mitchell.
9 At this point I will defer to Mr. Gordon with
10 regard to the defense.

11 MR. GORDON: Maura Carroll.

12 THE PRESIDING OFFICER: I'm sorry,
13 Mr. Gordon is calling Maura Carroll as part of his
14 case in chief; is that correct, Mr. Gordon?

15 MR. GORDON: In view of the -- yes.

16 THE PRESIDING OFFICER: Again, that --
17 a lot of this, ladies and gentlemen, is for
18 purposes of keeping an accurate record.

19 The respondents have made a
20 representation that they have integrated, if you
21 will, the presentation of their cases in chief,
22 each one having the opportunity to present theirs,
23 and they have decided to do it in this integrated

1 fashion. But at this point, if you will,
2 Mr. Gordon will be the first respondent making
3 inquiry of Ms. Carroll.

4 Please come forward, Ms. Carroll.

5 Ms. Carroll, please raise your right
6 hand.

7 (MAURA CARROLL, sworn.)

8 THE PRESIDING OFFICER: Please be
9 seated. And when you are comfortable, if you
10 would provide your business address for the
11 record. And you've been here during the
12 proceedings, by my observation, and so you've
13 heard all of the instructions that I've given to
14 witnesses.

15 I will just remind you, please, to keep
16 your voice up because of the recording, the
17 stenographic record. And because of that, we
18 can't have two people speak at the same time, so
19 please listen to the question asked, Mr. Gordon
20 completes it, then you answer, and under
21 examination by any counsel you would do the same
22 thing. Thank you very much.

23 THE WITNESS: Thank you.

1 THE PRESIDING OFFICER: Mr. Gordon, the
2 witness is yours.

3 MR. GORDON: Thank you very much.

4 DIRECT EXAMINATION

5 BY MR. GORDON:

6 Q. Would you state your name for the
7 record, spelling your last name?

8 A. My name is Maura Carroll,
9 C-A-R-R-O-L-L.

10 Q. And your business address?

11 A. My business address is 25 Triangle Park
12 Drive in Concord, New Hampshire.

13 Q. And what is your present position?

14 A. My position is executive director of
15 the New Hampshire Local Government Center.

16 Q. And for how long have you been
17 executive director of LGC?

18 A. I was appointed executive director in
19 June of 2010.

20 THE PRESIDING OFFICER: I need a
21 clarification here, because I've been through all
22 the exhibits and everything, and I haven't
23 found -- is there a date in June that you recall?

1 THE WITNESS: I believe it was June 6th
2 or 7th.

3 MR. GORDON: I think it's June 6th.

4 THE PRESIDING OFFICER: Very good.

5 Thank you.

6 BY MR. GORDON:

7 Q. And prior to that, were you interim
8 director?

9 A. Yes, I was, since September 4th of
10 2009.

11 MR. GORDON: Got them both?

12 THE PRESIDING OFFICER: I had that
13 second one. Go ahead, please.

14 BY MR. GORDON:

15 Q. Could you give me a little bit of your
16 background, where you were born?

17 A. I was born here in Concord.

18 Q. And where did you go to high school?

19 A. I went to high school at Bishop Brady
20 here in Concord.

21 Q. And did you go to college next?

22 A. I did. I went to College of the Holy
23 Cross in Worcester, Mass.

1 Q. And after graduating college, what did
2 you do?

3 A. I actually took five years and did a
4 number of jobs. I worked for a law firm as a
5 paralegal, I worked for some political campaigns,
6 and I worked for the state of New Hampshire for
7 some time.

8 Q. And what did you do for the state of
9 New Hampshire?

10 A. I worked for the Certificate of Need
11 Board, and did research for that board.

12 Q. And after engaging in this broad array
13 of work, did you decide to go to law school?

14 A. I did. I actually had decided to do
15 that earlier, but I took some time before I went.

16 Q. And why did you take some time before
17 you went to engage in those types of work?

18 A. There are some things that I really
19 wanted to do, had an opportunity to do to learn
20 more about the political structure. I had served
21 in the legislature and had wanted to pursue some
22 federal issues and was able to do so.

23 Q. Well, let's talk a little bit about

1 your engagement in the political process. Did you
2 ever run for political office?

3 A. I did. I ran for the state
4 legislature, and I ran for city council.

5 Q. And when you ran for the state
6 legislature, did you run from a district here in
7 Concord?

8 A. Ward 6 in Concord.

9 Q. And why did you want -- and I hate to
10 ask these questions, but how old were you when you
11 did that?

12 A. I was twenty.

13 Q. You were twenty years old, and why are
14 you wanting to run for political office?

15 A. Well, I was a political science major
16 in college. I was always interested in the
17 political system. My parents had been interested
18 in the political system, and so I knew that in
19 New Hampshire, because we had a large
20 representative body in the house, that it was an
21 opportunity for young people to participate early
22 in that process.

23 Q. And how did you find that process to

1 be?

2 A. Fascinating.

3 Q. And why?

4 A. Well, it gave me an opportunity to see
5 how to work with people over an issue. And from my
6 perspective, a public policy issue was the most
7 critical. It wasn't the political, if you will, in
8 the partisan sense, it really was how do we get a
9 public policy that we agree is a good public policy
10 adopted by the state of New Hampshire.

11 Q. And were you successful in your run for
12 legislature?

13 A. I was.

14 Q. And how many terms did you serve?

15 A. I served three terms.

16 Q. And then you mentioned also city
17 council?

18 A. Yes.

19 Q. When did you run for city council?

20 A. I ran for city council in the late
21 1980s, perhaps 1988 or 9.

22 Q. Did this follow your service in the
23 House?

1 A. It did.

2 Q. So after serving in the House for six
3 years you then decided to continue in the
4 political world?

5 A. Actually, I went to law school first,
6 and then I was -- I was employed by the
7 New Hampshire Municipal Association at the time,
8 and I thought it would be a very instructional
9 process for me to actually hold off and understand
10 all of the concerns that our members had about
11 local government.

12 Q. Okay, we'll get to that in a minute.
13 But you went to law school, and what law school
14 was that?

15 A. I went to Tulane in New Orleans,
16 Louisiana.

17 Q. And after graduating law school, what
18 was your first job?

19 A. My first job was as clerk to
20 Judge Johnson at the Supreme Court.

21 Q. In the New Hampshire --

22 A. In the New Hampshire Supreme Court,
23 excuse me.

1 Q. So right out of law school you got a
2 clerkship with a New Hampshire Supreme Court
3 justice?

4 A. I did.

5 Q. How did you find that experience?

6 A. That was also fascinating. It allowed
7 me to hone some of my legal writing skills, my
8 research skills, and to also -- we as clerks had to
9 tape the oral arguments, so I was able to watch
10 attorneys argue cases before the court.

11 Q. And after your clerkship, was it a
12 year?

13 A. It was two years.

14 Q. It was a two-year clerkship then? So
15 after those two years, what did you decide to do?

16 A. I went into private practice for a
17 brief time.

18 Q. And when you say brief, how brief is
19 brief?

20 A. Nine months.

21 THE PRESIDING OFFICER: For context,
22 can we put some dates as to these periods of time,
23 please?

1 MR. GORDON: Sure.

2 BY MR. GORDON:

3 Q. And what year did you graduate law
4 school?

5 A. 1985.

6 Q. And in what year did you begin your
7 clerkship?

8 A. 1985.

9 Q. And your clerkship ended in?

10 A. 1987.

11 Q. And your first job in private practice
12 was in Portsmouth?

13 A. In Portsmouth with the law firm of
14 Aeschilman and Tober.

15 Q. And that lasted nine months?

16 A. It did.

17 Q. And after that job ended, or you left
18 it, what was your next job?

19 A. My next job was to move to the
20 New Hampshire Municipal Association as staff
21 attorney.

22 Q. And that was in?

23 A. That was in 1988.

1 Q. And from 1988 until now, have you been
2 with NHMA or related entities?

3 A. Yes, I have.

4 Q. Almost a quarter of a century?

5 A. Yes.

6 Q. Would you describe to the hearing
7 officer in 1988 when you first started as staff
8 attorney, what did you do?

9 A. Essentially we provided legal advice to
10 our municipal members. We have a legal hotline,
11 local officials could call us with any type of
12 legal -- legal question that really was a general
13 legal question.

14 We did not represent our members in
15 court, so we did not answer issues that might go to
16 litigation. We did offer second opinions if we
17 were asked. We also provided training for our
18 local officials.

19 Q. So as a staff attorney in general, what
20 would be the types of questions that you would
21 get?

22 A. We would get questions anywhere from
23 zoning and planning issues to tax issues to

1 blinking yellow lights and environmental issues.
2 The whole gamut of the issues that -- that local
3 governments dealt with, charters and that sort of
4 thing.

5 Q. And when you say NHMA, what was at that
6 time NHMA?

7 A. The New Hampshire Municipal Association
8 was and is the state municipal league.

9 Q. And what does that mean?

10 A. That means it is one of 49 municipal
11 leagues in the country that represent their local
12 governments through a membership process. And
13 typically we provide advocacy services, legal
14 services, and the kinds of training that local
15 officials who, especially in New Hampshire are
16 volunteers, are asking to receive.

17 Q. And when you say membership process,
18 what do you mean by that?

19 A. We have -- we are a service
20 organization, which is a voluntary membership
21 organization. So we have all but one of
22 New Hampshire's municipalities as a member of our
23 organization, and we provide the services that our

1 members ask for, and that we have traditionally
2 over the years provided.

3 Q. And when you say training, what type of
4 training would be done?

5 A. We would do training in planning and
6 zoning issues. We would do some training -- we
7 would be asked questions about municipal charters
8 and how the process would ensue to change a
9 municipal charter.

10 We would give advice about roads and
11 highways. The whole gamut of issues that are
12 important to local government.

13 Q. So for a small community that didn't
14 have a lawyer on staff, they would rely upon you?

15 A. They would, in fact. Several years ago
16 when I was still doing some of the legal and
17 advocacy work, I had a call from a local official
18 who said, you have saved our community \$10,000 this
19 year, and our dues are 1,400.

20 Q. You mentioned advocacy work.

21 A. Yes.

22 Q. Was that also part of the services that
23 were offered by NHMA?

1 A. Yes. We offer the ability to represent
2 local government issues at the State House and in
3 state agency work and sometimes at the federal
4 level.

5 Q. Did you get a promotion at some point
6 at NHMA?

7 A. I moved from staff attorney to
8 government affairs director in 1989, and then in
9 2000 became general counsel for NHMA, and then in
10 2009 became interim executive director.

11 Q. Now, were you ever general counsel to
12 any of the health -- well, let me specifically
13 ask -- to HealthTrust, were you ever general
14 counsel to HealthTrust?

15 A. No.

16 Q. Were you ever general counsel to PLT?

17 A. No.

18 Q. Were you ever general counsel to the
19 Worker's Comp. Trust?

20 A. No.

21 Q. Did you ever give any of those entities
22 legal advice?

23 A. No.

1 Q. At no time?

2 A. At no time.

3 Q. And how did your responsibilities
4 change when you became chief legal counsel?

5 A. Well, they changed in that I was
6 overseeing both sides of the department. They had
7 been two separate departments, government affairs
8 and legal services. So I was responsible for
9 overseeing all of the legal advice that was
10 provided to our members, and I was also responsible
11 for all the advocacy work that we did.

12 Q. When you say two sides, let me break
13 that down. One side was related to just legal
14 services to the members?

15 A. Yes.

16 Q. In the range of issues that you've
17 talked about?

18 A. Yes.

19 Q. And the other side was advocacy?

20 A. Yes. And when we were a smaller
21 organization -- when I started with NHMA there were
22 two attorneys, and so the attorneys also did the
23 advocacy work. And as our members asked for

1 additional legal services and additional presence
2 at the State House, we grew, and there was a
3 government affairs department and the legal
4 services, but we interacted so much it did not make
5 sense for us to be separate departments.

6 It made sense for us to integrate the
7 two -- the two programs so that we were providing
8 the best service to our members, and so that we
9 could cross-train all of the attorneys that were
10 part of the programs.

11 Q. So then you found that following those
12 responsibilities did not serve the members as
13 well?

14 A. That's correct.

15 Q. And the members actually asked you to
16 change that so you could be more efficient and
17 effective with the services that you did?

18 A. Well, it grew from requests for
19 additional services from our members.

20 Q. And when you became chief legal
21 counsel, did you replace anyone?

22 A. I did. I replaced Bernie Waugh, who
23 had been in the position for 15 years.

1 Q. And when Bernie Waugh was in that
2 position, do you know whether or not he sought an
3 ethics opinion as to what the roles and
4 responsibilities were of NHMA lawyers?

5 A. I do know that he submitted a letter to
6 the bar association in September of 1994.

7 MR. GORDON: And, for the record, his
8 letter would be Exhibit 405. I won't go through
9 the document extensively, but I just want the
10 hearings examiner to know.

11 THE PRESIDING OFFICER: Do we believe
12 that that's an admitted exhibit? Give us a moment
13 to check our list, Mr. Gordon.

14 MR. VOLINSKY: Did you ask whether it
15 was admitted?

16 MR. GORDON: I believe it is.

17 MR. VOLINSKY: It's full.

18 THE PRESIDING OFFICER: It is a full
19 exhibit, and I have read it.

20 MR. GORDON: Then I won't need to go
21 through it.

22 THE PRESIDING OFFICER: Thank you, sir.

23 BY MR. GORDON:

1 Q. And in response to his request for a
2 legal opinion, did the New Hampshire Bar
3 Association provide one?

4 A. Yes.

5 MR. GORDON: And I'm sure you've read
6 that one as well, but to refresh your recollection
7 as to the exhibit number, it's 404.

8 THE PRESIDING OFFICER: Thank you.

9 BY MR. GORDON:

10 Q. And in that opinion -- well, I'll just
11 ask you to give your understanding as to what the
12 nature of the request was, and the nature of the
13 opinion that was issued by the bar association to
14 put in context the next question.

15 A. The letter was asking for a
16 clarification of how to describe the client that we
17 would have as an association, because we were all
18 lawyers employed by the association, and how did
19 that affect the attorney/client relationship with
20 those to whom we were providing legal advice.

21 It also asked clarification about how
22 we could make it clear to our own members what our
23 duties were and how we would provide the best legal

1 advice to those members.

2 And the opinion essentially identified
3 that we had to be clear that we were able to
4 exercise independent legal judgment outside of
5 anything the association might say or might want us
6 to do, and also that we had to be clear with our
7 members that we were responding to their legal
8 questions, that we were not sharing those questions
9 with any of the risk pool programs. We had no
10 idea, frankly, on the side of the legal services
11 department who, in fact, had coverage program
12 through NHMA or ultimately LGC.

13 And so we developed a process where we
14 made it clear in our job descriptions, and we also
15 made it clear in a legal users guide we provided to
16 our members, and currently we have a brochure that
17 sets all of those items out.

18 Q. So to put a fine point on it, what the
19 ethics opinion did was it made clear that NHMA's
20 client was the members, correct?

21 A. Correct.

22 Q. And you've also made clear that in that
23 role of NHMA counsel, you were not providing legal

1 advice to the trusts?

2 A. Correct.

3 Q. And you also indicated that that was
4 set forth in a job description, correct?

5 A. Yes.

6 Q. And was that as a result of the legal
7 opinion that had suggested that you should do so
8 so that it was clear that your obligations went to
9 the members as a lawyer and not to the trusts?

10 A. Yes.

11 MR. GORDON: Can you bring up the
12 general counsel? This is a document -- it
13 actually replaces one, because this is a little --
14 this is more accurate. There was one that was
15 admitted that was --

16 THE PRESIDING OFFICER: Do we have a
17 number on the one --

18 MR. GORDON: I'm going to do it right
19 now.

20 THE PRESIDING OFFICER: That's
21 admitted?

22 MR. GORDON: I shared it to
23 Mr. Volinsky, I'm going to mark it right now for

1 the LGC.

2 THE PRESIDING OFFICER: I'm sorry, can
3 you give me a reference to the job description
4 that has already been admitted.

5 MR. GORDON: I can do it as a
6 replacement, if you'd like. 408.

7 MR. VOLINSKY: 408?

8 MR. GORDON: Yeah.

9 THE PRESIDING OFFICER: I'm informed
10 that 408 is not a full exhibit at this time. So,
11 Mr. Volinsky, do you agree that Mr. Gordon can
12 substitute a job description later in time?

13 MR. GORDON: This is actually earlier
14 in time.

15 THE PRESIDING OFFICER: Actually
16 earlier in time as Exhibit 408?

17 MR. VOLINSKY: We agree that he may
18 substitute. And then when the proper substitution
19 is made, that that may be a full exhibit.

20 THE PRESIDING OFFICER: Very good,
21 let's do it all at once, then. So, again, as
22 administrative item during recess we will take
23 care of. We will take care of Exhibit 408.

1 Exhibit 408 isn't fully admitted, and it is the
2 document that Mr. Gordon has in his hand to which
3 Mr. Volinsky has no objection to its admission.

4 MR. GORDON: Do you want to mark it
5 now?

6 THE PRESIDING OFFICER: I think it
7 would be better for the record if you did it, sir.

8 MR. GORDON: I do, too.

9 (LGC Exhibit 408 was entered as evidence.)

10 THE PRESIDING OFFICER: And at the
11 recess we will make sure that the appropriate
12 representatives pull out whatever is 408 and this
13 goes in its place. Please continue, sir.

14 MR. GORDON: And knowing you read the
15 other one, I won't spend too much time on this,
16 but I just want to highlight --

17 THE PRESIDING OFFICER: Where the
18 changes are.

19 MR. GORDON: Well, it's more so the
20 nature of the work, which is paragraph 1. That
21 has not been a change.

22 BY MR. GORDON:

23 Q. And would you just briefly describe

1 with Exhibit No. 408 the nature of the work that
2 you did, how this described it, and the statements
3 with regard to setting forth the limitation of
4 your legal responsibilities with regard to anyone
5 else other than the members.

6 A. Well, this sets out that, in fact, the
7 job was to oversee all of the operations of the
8 legal services and government affairs department,
9 and so I would have interaction with the attorneys
10 who were providing legal advice, and with those
11 attorneys who were providing advocacy services for
12 our members.

13 We also would report -- in the
14 beginning the NHMA executive committee who oversaw
15 particularly the legislative issues, and also would
16 weigh in at times when we were filing amicus briefs
17 for the Supreme Court.

18 It also required at a later point for
19 me to serve on the leadership team as a part of LGC
20 and NHMA, and it also clearly states that the
21 independent judgment of the attorneys runs to --
22 and the attorney/client relationship runs to the
23 members and not to the association.

1 Q. And in this document -- and -- well,
2 let me first get to that part that you just said.
3 Could you go to page 2?

4 THE PRESIDING OFFICER: As you're doing
5 that, I want to clarify also, Mr. Gordon. You had
6 made a reference that indicated that I had read
7 the other one.

8 MR. GORDON: It wasn't an exhibit.

9 THE PRESIDING OFFICER: Correct. When
10 I said I had read, I was referring to LGC 404 and
11 405, those were exchanges about the ethics
12 opinion.

13 MR. GORDON: Yes.

14 THE PRESIDING OFFICER: I had not read
15 408.

16 MR. GORDON: Correct.

17 BY MR. GORDON:

18 Q. And if I look at that paragraph, second
19 paragraph there, is that what you just made
20 reference to, the clarification that in carrying
21 out your job's function that you exercise
22 professional judgment independent of your
23 relationship to LGC, NHMA, correct?

1 A. Yes.

2 Q. And this was actually the job
3 description after the merger took place, correct?

4 A. Yes.

5 Q. So while we did have some conversations
6 about your job responsibilities before the merger,
7 we haven't yet got up to that point, this was the
8 nature of the agreement as well following the
9 merger, correct?

10 A. Correct.

11 Q. And if I go back to page 1, and if you
12 go down -- halfway down, there's going to be a
13 mention of the municipal advocacy committee. Do
14 you see that? You have to keep on going, I
15 believe. See right there?

16 A. Yes.

17 Q. And prior to the merger, what was the
18 municipal advocacy committee?

19 A. Prior to the merger, NHMA's executive
20 committee governed all of the NHMA activities
21 regarding legal and government affairs.

22 Q. So it had a single board?

23 A. It had a single board. It actually was

1 the overarching board for the organization.

2 Q. Let's go now to the merger. And at the
3 time this -- and do you know when approximately
4 discussions began with regard to that, what I'll
5 call merger?

6 A. I believe it was in 2002.

7 Q. And at that point in time you were in
8 your NHMA position?

9 A. Yes.

10 Q. Did you have any role with regard to
11 any discussions with HealthTrust with regard to
12 the merger?

13 A. No. I actually did attend some of the
14 joint competition committee meetings, but prior to
15 any of that discussion, I had no conversation with
16 the risk pools or the trusts about that issue.

17 Q. And when you attended those meetings,
18 did you attend it as a staff member?

19 A. Yes.

20 Q. And a staff member of NHMA?

21 A. Yes.

22 Q. Did you have any authority to vote on
23 any of the issues?

1 A. No.

2 Q. Did you have any authority to advocate
3 on any of the issues?

4 A. No, my role really was to respond to
5 questions that the committee had about the role of
6 the department that I oversaw.

7 Q. And clearly you provided no legal
8 advice?

9 A. No.

10 Q. To any of the trusts?

11 A. No.

12 Q. And when the trust voted, HealthTrust,
13 did you participate in that vote?

14 A. No.

15 Q. Were you even there?

16 A. No, we were not -- that was a -- a
17 nonpublic meeting that only the executive director,
18 I believe, was at the individual board meetings,
19 none of us as -- as staff was part of the meeting.

20 Q. So when the vote was made sometime in
21 April of 2003 by the various trust, you had -- you
22 did not attend those meetings?

23 A. Correct.

1 Q. You did not provide any legal
2 counsel --

3 A. Correct.

4 Q. -- to any of those trusts? You had no
5 voice in that process with regard to what those
6 independent trusts decided to do, correct?

7 A. Correct.

8 Q. And each of those independent trusts
9 were allowed to exercise their own independent
10 judgments based upon their directors as to what
11 those trusts believed to be in their best
12 interests?

13 A. That's correct.

14 THE PRESIDING OFFICER: Mr. Gordon,
15 before you get too far down the line, could I have
16 some offer as to the date of this job description
17 that has been admitted at 408? My copy is
18 undated.

19 BY MR. GORDON:

20 Q. I'm going to ask you if you can give
21 us --

22 A. I would say the general timeframe would
23 be 2003, 2004.

1 THE PRESIDING OFFICER: Is there
2 another document or other record, to your
3 knowledge, Ms. Carroll, that would help me discern
4 that?

5 THE WITNESS: I don't know that there's
6 a record that's a part of this proceeding, but
7 certainly we can go back to -- to our records in
8 the HR department about when various job
9 descriptions changed.

10 THE PRESIDING OFFICER: Okay, thank
11 you.

12 MR. GORDON: And if you want that, I
13 could --

14 THE PRESIDING OFFICER: Please.

15 MR. GORDON: -- do my best to get that
16 information to you.

17 THE PRESIDING OFFICER: We'll see if
18 the significance develops into anything. Thank
19 you.

20 BY MR. GORDON:

21 Q. After a decision was made, I believe in
22 April of 2003 --

23 A. Yes.

1 Q. -- where did you go?

2 A. Well, I stayed with this department,
3 but there were some role changes in that because I
4 was a member of the leadership team, I was
5 required, to the extent that I could, to attend the
6 LGC board meetings, and I had the primary staffing
7 requirement for the NHMA municipal advocacy
8 committee.

9 Q. And when you say this department, what
10 did you mean by this department?

11 A. I mean legal services and government
12 affairs.

13 Q. So you still stayed within the NHMA
14 house, so to speak?

15 A. Yes.

16 Q. And what were your duties at that point
17 in time?

18 A. My duties were roughly the same, with
19 the exception of the involvement then with
20 attending LGC board meetings and helping to put
21 together the process of the Municipal Advocacy
22 Committee, MAC, which was a board of 31 members.
23 And our department had the responsibility to seek

1 volunteers to -- to member that committee, and to
2 serve as staff as the committee did its work.

3 Q. And to the best of your recollection at
4 this point is Exhibit 408 sometime after the
5 merger when it redefined what your position was?

6 A. Yes.

7 Q. And what was the governing structure of
8 NHMA? How was that governed?

9 A. Under the LGC bylaws there was an
10 operating agreement with NHMA, but the governing
11 body of NHMA was MAC, the Municipal Advocacy
12 Committee. They adopted the budget for NHMA, and
13 they also worked on the legislative policy issues
14 for the organization.

15 Q. And how was that board comprised?

16 A. That had the 12 municipal members of
17 the LGC board as members of MAC, and then an
18 additional 19 members who were elected by the NHMA
19 membership at its annual meeting.

20 Q. So governing the NHMA were 12 members
21 of the LGC board who were municipal --

22 A. Correct.

23 Q. -- members, and then other

1 municipalities could then elect 19 other members
2 to serve on that board?

3 A. That's correct.

4 Q. And did those 19 additional members
5 overlap with the LGC board?

6 A. No. They didn't overlap at all. The
7 only overlap with the LGC board was the 12
8 municipal members of the LGC board.

9 And then there was a further committee
10 that overlapped with MAC, which is the Committee on
11 Government Affairs, and that was a 75-member
12 committee that advised MAC, and also participated
13 in developing legislative policy for the
14 membership.

15 Q. Seventy-five member?

16 A. Yes.

17 Q. And why so many?

18 A. Well, the idea was to have as much
19 representation of our members as possible, and to
20 have people have an opportunity to vet the policies
21 that were being suggested by our members.

22 Ultimately all of those policies went
23 to a vote, and still do go to a vote of our

1 membership, but there needs to be some ability to
2 have committees talking about the various details
3 of those policies.

4 Q. So you tried to get as much input as
5 you could from the variety of communities in order
6 to do the legislative advocacy?

7 A. That is correct.

8 Q. During the time that you were general
9 counsel to NHMA, did you also attend LGC board
10 meetings every now and then?

11 A. I did when I could.

12 Q. And what do you mean when you could?

13 A. Well, often the LGC board meetings
14 would be during the legislative session or during
15 study time for the legislature, and my first
16 responsibility was to attend to that.

17 Q. So if we look through the meeting
18 minutes for LGC, will we find you at all the
19 meetings?

20 A. No.

21 Q. If we looked through the committee,
22 would we find you at all of the committee
23 meetings?

1 A. No.

2 Q. Was it more of a hit or miss?

3 A. Well, I tried to arrange my schedule to
4 be able to attend, but my schedule was really not
5 my own.

6 Q. And I believe that --

7 MR. GORDON: Your BSR 35 is an exhibit,
8 I believe?

9 MR. TILSLEY: It is, it's in full.

10 MR. GORDON: And it's book 1. And I
11 won't go through all the documents, but I do think
12 what I would do is highlight, if this is
13 appropriate, or if you want me to elicit it from
14 the witness, the various issues that would be set
15 forth -- the various issues that she would discuss
16 at a board meeting, and issues that -- when she
17 did not appear, and when she did appear and at
18 times didn't speak.

19 THE PRESIDING OFFICER: Your reference
20 is to BSR 35?

21 MR. GORDON: Yes.

22 THE PRESIDING OFFICER: Including the
23 affidavit of Maura Carroll?

1 MR. GORDON: Yes, which is an exhibit.

2 THE PRESIDING OFFICER: Very good. As
3 has been the pattern, if you will, highlight. I
4 don't need the entire -- I don't feel I need the
5 entire text read for me to issue an impartial
6 decision.

7 MR. GORDON: That's what I thought.
8 And maybe if I just approach the witness and just
9 walk through, and as I walk through, I just could
10 look to you and highlight what we wish to do.

11 THE PRESIDING OFFICER: Absolutely.
12 I'll follow along, if you can give me a page
13 reference.

14 MR. GORDON: They're not marked.

15 THE PRESIDING OFFICER: Understood, but
16 get me close.

17 MR. GORDON: Okay, I am. I'm going to
18 get you to right here. Which is Exhibit A.

19 THE PRESIDING OFFICER: Exhibit A.
20 Thank you, Mr. Gordon. Go ahead.

21 BY MR. GORDON:

22 Q. And if I show you Exhibit A, this is
23 meeting minutes of May 4, 2004?

1 A. Yes.

2 Q. And it is an executive committee
3 meeting?

4 A. Executive session of the board, yes.

5 Q. And at this meeting, for example, you
6 did not -- if you remember, did not say anything
7 at that meeting, correct?

8 A. Right.

9 Q. And then if we go to -- let's go to
10 another one, which would be the time when you did
11 speak, which would be October 17th, 2007.

12 MR. GORDON: It's this one right here.

13 THE PRESIDING OFFICER: Do you have a
14 letter for that one, Mr. Gordon?

15 MR. GORDON: It is. It would be -- I
16 could put it on the Elmo, if that makes it
17 quicker. It would be Exhibit B.

18 THE PRESIDING OFFICER: B. Exhibit 35
19 B, minutes of October 17, 2007.

20 BY MR. GORDON:

21 Q. And at that point, when you did speak
22 and you outlined what it was that you did, what
23 were the things that you outlined as a staff

1 member that you were reporting on?

2 A. I was reporting on the workshops that
3 our department was engaged in preparing and -- and
4 carrying out for the fall and early winter.

5 Q. And the workshops meaning what?

6 A. Well, we have a budget and finance
7 workshop in September. We presented before the
8 school treasurers, the tax collectors annual
9 conference, we were attending the GACIT hearings,
10 the Governor's Advisory Committee on Intermodal
11 Transportation. We were providing junkyard
12 workshops, the municipal law lectures, the
13 Selectperson's Institute, we were part of the
14 office of energy and planning fall workshop.

15 We did a town -- or were planning a
16 town meeting workshop. We did several right to
17 know law presentations. We were meeting with an ad
18 hoc transportation group. We did a tax cap charter
19 presentation for the city of Dover, and then we
20 were preparing sessions for the annual conference.

21 Q. So this represents just a snapshot of
22 the type of work that you were doing?

23 A. Correct.

1 Q. And as a staff member, you were
2 reporting back this is what I'm doing, right?

3 A. Yes.

4 Q. And then also, if we go through, we'll
5 see that you reported back on legislative
6 activities that were happening at our State House?

7 A. Occasionally.

8 Q. Now, from 2003 to around 2008, 2009,
9 you were doing all this work for NHMA?

10 A. Yes.

11 Q. And then did you learn that the
12 executive director was going to leave?

13 A. Yes.

14 Q. And that a position was opening?

15 A. Yes.

16 Q. And did you have the opportunity to
17 look at the brochure that announced that this was
18 occurring?

19 A. I did.

20 MR. GORDON: And I believe it's a full
21 exhibit, 450?

22 MR. TILSLEY: It is, Steve.

23 MR. GORDON: If you could bring it up.

1 These are the packets here. Can you make that a
2 little larger?

3 BY MR. GORDON:

4 Q. And if you go down, this is what was
5 issued as an outstanding opportunity?

6 A. Yes.

7 Q. Glad you took it?

8 A. Yes.

9 Q. Because you took it you're here, right?

10 A. That's correct.

11 Q. It goes on to describe the ideal
12 candidate. And it says the LGC board of directors
13 is seeking a dynamic and highly qualified
14 individual to serve as its next executive
15 director. And then it goes on to describe the
16 qualifications and the attributes of what is the
17 ideal candidate.

18 And in the introduction, it seeks a
19 leader, a professional manager with a varied
20 background, to include municipal and statewide
21 public policy experience, business expertise,
22 skills and legislative advocacy, strategic
23 planning, familiarity with insurance pooling, and

1 an individual who possesses unquestionable ethics
2 and integrity.

3 Did you feel that you fit that bill?

4 A. Well, I was very clear with the search
5 committee that I didn't have all of the traits of
6 the ideal candidate. I had not had experience in
7 the pooling side of our business.

8 The board was very aware that I did
9 not, and what I did come to the table with was
10 background in public policy, background in local
11 government, a background in having served on a
12 variety of boards that gave me some exposure to
13 other business procedures and the kinds of
14 decision-making that leaders faced.

15 I had had training in leadership, and I
16 knew that the board knew what my weaknesses were,
17 and I believe they knew what my strengths were.

18 Q. And balancing whatever weakness you
19 might have, and balancing whatever strengths you
20 might have, the board in the exercise of its
21 judgment thought that you fit that bill for the
22 ideal candidate, correct?

23 A. Yes.

1 THE PRESIDING OFFICER: Mr. Gordon,
2 you're leaving that exhibit?

3 MR. GORDON: I'll go through it.

4 THE PRESIDING OFFICER: I don't wish
5 you to go through it, but could you make a
6 representation to me as to what the source of this
7 is? You characterized this as a brochure. Is it
8 a brochure, or is it something out of a
9 publication? Do you recall, Ms. Carroll?

10 THE WITNESS: Yes, it was prepared by
11 the Mercer Group, which was the recruiting firm
12 that the board worked with, and it was sent
13 nationally to a number of outlets.

14 THE PRESIDING OFFICER: Okay, thank
15 you.

16 BY MR. GORDON:

17 Q. And just to follow up on who the Mercer
18 Group is and how they develop these ideal traits,
19 did the Mercer Group meet with the directors?

20 A. Yes. The board had -- had appointed a
21 search committee, and the search committee chose
22 the recruiting firm. There were two or three
23 recruiting firms that had submitted an RFP, to my

1 recollection. They chose the Mercer Group, and the
2 Mercer Group coordinated the process with the
3 search committee.

4 Q. And in determining the criteria to be
5 utilized in seeking and selecting the ideal
6 candidate, did the Mercer Group meet with the
7 board of directors?

8 A. The Mercer Group met with the search
9 committee, I'm not sure they met with the full
10 board. But Mercer also was chosen because they had
11 experience with public sector entities, and so the
12 board wanted to make sure that the recruiter
13 understood the needs of a state league and local
14 governments generally.

15 Q. And did the search committee contain
16 members of the board?

17 A. Yes.

18 Q. And did the Mercer committee also meet
19 with staff to help?

20 A. Yes. Actually, there were a couple of
21 meetings with staff where the board solicited what
22 the staff might be looking for in the next
23 executive director.

1 Q. And although I made mention to it in my
2 opening statement and don't wish to go through it
3 again, there are a number of factors that were put
4 specifically for the criteria for the knowledge,
5 skills and abilities in this listing?

6 A. Yes.

7 Q. And if you look to the first one,
8 ability to implement and execute the strategic
9 plan as developed by the board of directors, do
10 you see that?

11 A. Yes.

12 Q. And ability to build a vision for the
13 future with the board and staff. There?

14 A. Yes.

15 Q. Ability to work and build consensus
16 with a large, diverse board which comes from
17 different local government entities with different
18 roles and responsibilities. What did you
19 understand that part to mean?

20 A. Well, we have under our bylaws a board
21 that can be as large as 31 members, and so it's
22 important as we're going through issues that the
23 board has to grapple with, that we can present

1 information to the board to help them make
2 decisions in the most informed way.

3 So it was -- it was in my belief the
4 executive director's role to assure that however
5 board members could absorb information, that's the
6 way we were providing it. That whatever the board
7 members wanted in order to assure that they had
8 enough information in their hands to make a
9 decision, that they had it.

10 I was not in a role where I was leading
11 the board or presiding over the board, but because
12 there were different roles that each of the board
13 members held in their communities, there was a
14 different educational background on some of the
15 issues.

16 Some of the board members have a very
17 keen financial background, some are elected
18 officials and have a significant background in
19 process and how you get from one point to the next
20 in making those decisions, and people absorb
21 information in different ways. So it was important
22 for me in my role to assure that they are all
23 comfortable and had all questions answered.

1 Q. In the way of collaboration?

2 A. Yes.

3 Q. A skill that you learned when you were
4 a legislator?

5 A. Yes.

6 Q. I'm going to go to the next one,
7 ability to effectively lead and manage a high
8 caliber group of department directors and support
9 staff.

10 A. Yes.

11 Q. And what did you understand that to
12 mean?

13 A. We have an incredible staff of very
14 capable people. One of the questions that the
15 search committee posed to me was would you
16 eliminate all of your staff and bring in a whole
17 new cadre of people.

18 But we have people on staff who bring
19 such talent and experience, long-term experience to
20 the organization, that that didn't make sense to
21 me, and I don't think it made sense to the board to
22 go in on day one and have a new executive director
23 clean out the leadership and start anew.

1 There were a lot of things that were
2 long-term projects, and in my role I needed to be
3 comfortable that I could work with the folks who
4 were in place, and then move forward with the
5 issues that the board wanted me to.

6 Q. And one other last one, ability to be
7 an effective negotiator, delegator. Are you able
8 to delegate, or do you micromanage everything?

9 A. I do not micromanage everything. I
10 like to be in the loop with information, but, no, I
11 can delegate. There are too many issues that come
12 across my desk for me to adequately handle them all
13 by myself.

14 Q. Okay. You indicated -- the board chose
15 you, you became interim director?

16 A. Yes.

17 Q. And at that point you were governed by
18 bylaws?

19 A. Yes.

20 Q. And you were governed by, actually,
21 bylaws before that, right?

22 A. Yes.

23 MR. GORDON: That can come down.

1 Exhibit 222. I think the exhibit may be up with
2 you, but this is a full exhibit.

3 THE PRESIDING OFFICER: This is a full
4 exhibit. This is LGC 222, Mr. Gordon?

5 MR. GORDON: Yes. And could you blow
6 that up a little bit? And go down halfway.

7 BY MR. GORDON:

8 Q. And I just want to bring your attention
9 to article 8 of the bylaws.

10 A. Yes.

11 Q. And this describes the general duties
12 of the board of directors, correct?

13 A. That's correct.

14 Q. And the directors shall set policy,
15 oversee and administer LGC, NHMA HealthTrust, PLT
16 and LGC Real Estate, and without limitation to the
17 preceding clause shall perform the following. And
18 the first thing here is create reserves for the
19 payment of benefits and claims and for any other
20 legitimate purpose for LGC, correct?

21 A. Correct.

22 Q. And the next is pay or provide for the
23 payment on behalf of members to the insurer of all

1 premiums as they become due, correct?

2 A. Correct.

3 Q. And that's a board duty?

4 A. Yes.

5 Q. Another board duty is cause to be
6 maintained accounts of all investments, receipts,
7 disbursements and other transactions?

8 A. Correct.

9 Q. Board duty?

10 A. Yes.

11 Q. Next board duty is engage an
12 independent certified public accountant, correct?

13 A. Yes.

14 MR. GORDON: Can you go down a little
15 bit more, or which is the next page, actually.

16 BY MR. GORDON:

17 Q. With F, pay all taxes and assessments
18 of any kind whatsoever, right?

19 A. Yes.

20 Q. Correct?

21 A. That's correct.

22 Q. Cause the terms and provisions of the
23 bylaws, any certificate of formulation and any

1 rules to be performed and carried out, and the
2 assets of NHMA and the trust to be properly held
3 and administered, correct?

4 A. Correct.

5 Q. Board duty. Let's go to I. Assure
6 compliance with the requirements of NH RSA 5-B as
7 amended or any subsequent law of the state of
8 New Hampshire in substitution thereof. A board
9 duty.

10 A. Yes.

11 Q. And also to insure that it maintains
12 its IRS exemption under section 115; board duty.

13 A. Yes.

14 Q. And then if we go down, the next is the
15 power of the directors, and that gives them the
16 power to fulfill the duties set forth above,
17 right?

18 A. That's correct.

19 Q. Let's go to section 8.3, which is the
20 next page. This is your section, this is you?

21 A. Yes.

22 Q. These are your duties. The duties of
23 the executive director shall include, without

1 limitation, carrying out policies established by
2 the directors, correct?

3 A. Correct.

4 Q. That's your duty, to carry out the
5 policies?

6 A. Yes.

7 Q. Maintaining the competitiveness of the
8 LGC and the trusts, that's your duty?

9 A. Yes.

10 Q. And then locating and recommending
11 various contractors, supervising, reporting of
12 contractor performance, the provision of financial
13 and accounting reports, et cetera. Those are your
14 duties of what you as executive director are to
15 do, correct?

16 A. Correct.

17 Q. And then section 8.4 provides the
18 powers within the bylaws for you to perform those
19 duties so designated, correct?

20 A. Yes.

21 Q. There are some issues in this case that
22 I want to discuss about, and that is the formation
23 of these entities, the trusts, LGC, and the

1 structure that we've talked about. Those
2 decisions were made prior to you becoming
3 executive director, is that correct?

4 A. That's correct.

5 Q. The RBC level of 4.2, that came before
6 you were executive director?

7 A. Correct.

8 Q. In fact, that came in almost -- well,
9 from now it's almost a decade earlier, correct?

10 A. Correct.

11 MR. GORDON: And for the court's
12 recollection, I would just cite to two exhibits on
13 this issue where the RBC was recommended to
14 HealthTrust, and that would be Exhibit 36.

15 THE PRESIDING OFFICER: That's a BSR
16 exhibit?

17 MR. GORDON: No, it's an LGC exhibit.

18 THE PRESIDING OFFICER: Thank you.

19 MR. GORDON: And the date of that was
20 November 25, 2002. And, also on that issue, there
21 was a financial report, Exhibit 151.

22 THE PRESIDING OFFICER: LGC 151.

23 MR. GORDON: LGC 151 at page 7 of the

1 financial report, pages 6 through 7 where there's
2 a full discussion about the setting of the RBC at
3 4.2.

4 BY MR. GORDON:

5 Q. That decision was made before you
6 became executive director?

7 A. Correct.

8 Q. And to put a fine point on it, did you
9 provide any legal advice or counsel with regard to
10 the setting of that RBC to HealthTrust in 2002?

11 A. No.

12 Q. And did you ever at any time provide
13 any legal advice about the setting of a RBC at
14 4.2?

15 A. No.

16 Q. The next issue that's been talked about
17 in this case is a strategic plan of 1 percent, do
18 you remember that?

19 A. I do.

20 Q. Was the decision to implement a
21 strategic plan made prior to you becoming
22 executive director?

23 A. Yes.

1 Q. And, in fact, was that decision made
2 sometime in 2004?

3 A. Yes.

4 Q. Well before you became executive
5 director?

6 A. That's correct.

7 MR. GORDON: And for the court's
8 benefit, I would point to LGC Exhibit 78, which is
9 the executive session of July 15, 2004 where there
10 was a lengthy discussion -- significant, lengthy
11 discussion about the implementation of a strategic
12 plan of 1 percent.

13 BY MR. GORDON:

14 Q. Next, surplus. You've heard a lot of
15 talk about surplus.

16 A. Yes.

17 Q. And how the surplus was spent?

18 A. Yes.

19 Q. Were those decisions made before you
20 became executive director?

21 A. Yes.

22 Q. Did you ever provide any legal advice
23 on how surplus should be spent?

1 A. No.

2 Q. Did you ever provide any legal advice
3 on the adequacy of surplus?

4 A. No.

5 Q. In fact, you heard the testimony of
6 Mr. McCue yesterday where he introduced and
7 provided a legal opinion as to how surplus could
8 be spent?

9 A. Yes.

10 MR. GORDON: And for the record, that
11 is Exhibit 381.

12 BY MR. GORDON:

13 Q. And, in fact, his opinion preceded by
14 more than two years your appointment as interim
15 director?

16 A. That is correct.

17 Q. Next issue that has been discussed is
18 the workers' comp. payments to supplement, assist,
19 subsidize, whatever one or words you want to use.
20 Were you involved in those decisions, or did those
21 decisions precede you?

22 A. Those decisions preceded my role as
23 executive director.

1 Q. So at the time that there was -- we
2 know the strategic funding took place in 2004,
3 when payments were made, all those payments
4 preceded your appointment as executive director?

5 A. Yes.

6 Q. Or if not all, most of them, correct?

7 A. Yes.

8 Q. Did you give any advice on these
9 issues?

10 A. I did not.

11 Q. But you did hear at some point as
12 executive director, you did hear that members had
13 some issues about that?

14 A. I did.

15 Q. And looking at those ideal
16 qualifications about trying to bring issues to the
17 front and to have discussion, communication, did
18 you think it was appropriate to bring those
19 members' concerns to the attention of the board?

20 A. I did.

21 MR. GORDON: And could you bring up
22 Exhibit 138?

23 THE PRESIDING OFFICER: This is LGC

1 138?

2 MR. GORDON: LGC. I'm sorry, your
3 Honor, I'll get it, LGC. And if you go to page 4,
4 please. And after I finish this question, I'll
5 just take -- I'll ask for the morning break, if
6 that's okay.

7 THE PRESIDING OFFICER: We'll see.

8 MR. GORDON: I can ask.

9 BY MR. GORDON:

10 Q. And the date of this is May 15th, 2011?
11 If we go back to -- would you go back to page 1?
12 May 15th, 2011. And this is the finance committee
13 meeting of LLC?

14 A. Yes, May 25th.

15 Q. And if you go to page 4 of that
16 document. Where it says other business, it says
17 Maura Carroll asked to discuss the past transfer
18 of 1 percent of employer HealthTrust contributions
19 to the workers' comp. program, correct?

20 A. Yes.

21 Q. It says she had received members' input
22 about the direction LGC should take?

23 A. Yes.

1 Q. And then it says discussion ensued?

2 A. Yes.

3 Q. Do you recall what the discussion was
4 in general?

5 A. Well, generally I think that the
6 members of the finance committee wanted the full
7 board to have the discussion about that, but it was
8 essentially about the return to HealthTrust of the
9 amount of money that was the total subsidy over the
10 time of the transfers.

11 Q. And then it says that a decision was
12 made, asked that this be discussed at the board
13 meeting on June 2nd, 2011.

14 A. Correct.

15 Q. So when we heard yesterday about the
16 collaborative process issue would be raised at the
17 committee, you raised that as a member issue?

18 A. Yes.

19 Q. And there was some discussion?

20 A. Yes.

21 Q. And then they wanted fuller board
22 discussion?

23 A. Correct.

1 MR. GORDON: I think that this would be
2 a convenient time for me to take a break, your
3 Honor.

4 THE PRESIDING OFFICER: How much more
5 do you have on direct, Mr. Gordon?

6 MR. GORDON: Probably about 15 minutes.

7 THE PRESIDING OFFICER: Why don't you
8 continue, please.

9 MR. GORDON: Okay. Bring up
10 Exhibit 139.

11 BY MR. GORDON:

12 Q. These are minutes of June 2nd, 2011?

13 A. Correct.

14 Q. And then if we go to page 3. And,
15 again, this section here of resolutions, where it
16 says Maura Carroll stated that it has been
17 suggested by members that something be done to
18 acknowledge the money that was transferred, and
19 then there was a -- it says the recommended action
20 to the board is to transfer money back to
21 HealthTrust from workers' compensation, in parens,
22 with interest?

23 A. Yes.

1 Q. And was that the recommendation of the
2 finance committee?

3 A. No, the finance committee did not have
4 a recommendation. This was being brought by staff,
5 primarily by me.

6 Q. Okay. So you said I think it should be
7 with interest?

8 A. Yes.

9 Q. And then the minutes will speak for
10 itself, but you can see here it says a lengthy
11 discussion ensued relative to the proposed
12 resolution and whether to charge interest, and
13 there was a back and forth.

14 MR. GORDON: Go down a little bit more.

15 BY MR. GORDON:

16 Q. And then it says a lengthy discussion
17 ensued relative to the transfer and whether the
18 transfer should include interest. David Frydman,
19 who is David Frydman?

20 A. He is our inhouse general counsel.

21 Q. And he said that the loan would be
22 drafted as a contingent liability and it would be
23 paid by the workers' compensation program before

1 any surpluses are returned to the members,
2 correct?

3 A. Correct.

4 Q. And then you explained that the staff
5 is trying to be proactive and make a good faith
6 effort in dealing with this issue by drafting a
7 loan.

8 A. Yes.

9 Q. That was you?

10 A. Yes.

11 Q. And then there was also discussion as
12 to whether the workers' compensation program can
13 ever be successful and self-sustaining. Staff
14 indicated its belief that over time the workers'
15 comp. program can be successful and would be to
16 pay back the funds, correct?

17 A. Correct.

18 Q. And then there was discussion -- there
19 was a motion, without interest, and that was voted
20 upon by the board, correct?

21 A. Correct.

22 MR. GORDON: And then if you go to the
23 next page. Stop, please.

1 BY MR. GORDON:

2 Q. Then it says a question arose relative
3 to how this transaction would be reflected in the
4 financial statements and an audit. Sandal Keefe
5 stated she had discussed this matter with the
6 auditors, and will continue to do so before the
7 legal documents are executed, correct?

8 A. Correct.

9 MR. GORDON: Exhibit 281, please. Do
10 you have that -- I think that that's a full
11 exhibit.

12 THE PRESIDING OFFICER: 281 is a full
13 exhibit.

14 MR. GORDON: Do you want to take a look
15 at a copy?

16 THE PRESIDING OFFICER: Sure.

17 MR. GORDON: Does that make it easier
18 for you?

19 THE PRESIDING OFFICER: Yeah.

20 BY MR. GORDON:

21 Q. And then this described the -- this was
22 the vote of the board in adopting a resolution
23 with regard to this issue?

1 A. Yes.

2 Q. Correct?

3 A. That's correct.

4 Q. And it discusses actually the history
5 of what took place, correct?

6 A. Yes.

7 Q. That following extensive due diligence
8 and deliberation, exercising its prudent business
9 judgment and determining and providing support for
10 the ongoing operation of the workers' comp. risk
11 pool was required to better administer and manage
12 LGC members long-term total claims liability,
13 including that of HealthTrust, is that correct?

14 A. That's correct.

15 Q. And the next paragraph it went down to
16 describe that there was 1 percent of contributions
17 attributable to the employer share of HealthTrust.
18 What did the employer share of HealthTrust mean?

19 A. Well, it's my understanding that at the
20 time that the board made the decision about the
21 strategic plan, that there was concern on the part
22 of the members of the board who represented
23 employees that there be an attempt made to

1 segregate monies that were actually paid into the
2 HealthTrust program by employees.

3 So there was an attempt to identify
4 just how much employees were paying as a part of
5 their health program, and to subtract that before
6 the 1 percent was identified.

7 Q. And if you go down to the next whereas
8 clause, that's what it actually indicates right
9 there, 1 percent of HealthTrust contributions did
10 not include any funds attributable to the employee
11 or retiree contributions for the HealthTrust
12 coverage, correct?

13 A. Correct.

14 Q. And then the -- if you go down to the
15 next clause, that describes the actual pools were
16 operated by separate legal entities, correct?

17 A. Yes.

18 Q. And that goes into the concern that was
19 expressed, correct?

20 A. Correct.

21 Q. Go down to the next one. LGC is a
22 membership organization and responds to those
23 concerns, correct?

1 A. Correct.

2 Q. Go to the next page, to speed this
3 along.

4 MR. GORDON: Okay, stop there, please.

5 BY MR. GORDON:

6 Q. It talked about the characterization of
7 the 17.1, approximately, million?

8 A. Yes.

9 Q. That should be characterized as a loan?

10 A. Yes.

11 Q. And the next paragraph here, pursuant
12 to the terms of the note, workers' compensation
13 risk pool will agree to repay HealthTrust from and
14 to the extent of any workers' compensation risk
15 pool -- that's limited to the workers'
16 compensation risk pool, correct?

17 A. Correct.

18 Q. -- surplus each year until the total
19 amount of these transfers is repaid in full.

20 And then it describes how it will be
21 treated, as administrative costs, correct?

22 A. Correct.

23 Q. And then it says, thus, the repayment

1 will be deducted from any excess over other
2 liabilities, operating expenses and reserves
3 before calculating any surplus to be returned to
4 workers' compensation risk pool members, correct?

5 A. Correct.

6 Q. And then, finally, it says upon merger
7 of PLT and HealthTrust into a single entity, the
8 note shall not be extinguished and shall not
9 remain in full effect as an ongoing liability
10 between the workers' compensation risk pool and
11 the HealthTrust risk pool, correct?

12 A. Correct.

13 MR. GORDON: Go to Exhibit 279, please,
14 which I believe is a full exhibit.

15 BY MR. GORDON:

16 Q. And that actually is the promissory
17 note that was executed following the resolution,
18 correct?

19 A. Correct.

20 Q. And it includes some of the additional
21 language in there about intent and purpose,
22 correct?

23 A. That's right.

1 Q. And the terms of the note are without
2 interest, correct?

3 A. That's right.

4 Q. And that was a decision that was made
5 by the board, correct?

6 A. Correct.

7 Q. And while I will not go into it at this
8 point in time, in response to the issues that were
9 raised, these were appropriately reported in the
10 HealthTrust financial statements of 2010, 2009?

11 A. Yes.

12 MR. GORDON: And that would be, for
13 your benefit, Exhibit LGC 159, and that is at page
14 35 of the exhibit. And with regard to PLT, that
15 would be reported at an LGC Exhibit 169 at
16 page 33.

17 THE PRESIDING OFFICER: Thank you.

18 MR. GORDON: At this point I think I
19 have 15 minutes, so I misstated my projection, so
20 do you want me -- I'm ready to go on to another
21 topic, or --

22 THE PRESIDING OFFICER: I'm sure you're
23 getting close. Please continue.

1 MR. GORDON: Just checking.

2 BY MR. GORDON:

3 Q. The next area that I'd like to go to is
4 you started in -- as an interim director in
5 September of 2009?

6 A. That's correct.

7 Q. When did the BSR make its first request
8 for documents upon LGC?

9 A. We were notified in July of 2009 of the
10 complaint. I'm not sure of the exact date of the
11 request for information, but I do believe that the
12 notification did indicate an investigation was
13 forthcoming.

14 Q. So before you even got into the seat
15 that you now sit in, the BSR investigation had
16 begun?

17 A. Yes.

18 Q. And when the BSR investigation began,
19 did you utilize lawyers to aid and assist you with
20 regard to that investigation?

21 A. Yes.

22 Q. And was that the Hinckley Allen law
23 firm?

1 A. That's correct.

2 Q. So in one of your first briefings in
3 sitting down, you had to deal with the aspect that
4 as executive director a complaint had been filed,
5 and how do we respond to that complaint?

6 A. That's correct.

7 Q. And in that regard did you rely upon
8 the advice of counsel?

9 A. I did.

10 Q. In addition to dealing with these
11 issues, that is the BSR's investigation, were you
12 also dealing with your other responsibilities as
13 executive director?

14 A. Yes.

15 Q. And what were those other
16 responsibilities?

17 A. Well, as I came on board, the board of
18 directors had determined that since we had not done
19 a management review for many years, in light of a
20 new director coming on board, it would be
21 appropriate for us to review all of the operations
22 of the organization and to see whether we were
23 doing things as efficiently and effectively as

1 possible.

2 And so a board committee was developed
3 working with four consultants, which I believe were
4 named yesterday, and we spent a year and a half
5 looking at the structure of the organization, all
6 of the employees in the organization, and the
7 services that we were providing.

8 So that was a project that -- that was
9 overarching the day-to-day operation of the
10 organization.

11 Q. So if I can think of the three major
12 issues that you're dealing with, you're dealing
13 with being new to the executive director's
14 position?

15 A. Yes.

16 Q. And you're trying to create your own
17 culture of leadership?

18 A. Yes.

19 Q. Could be described as maybe different
20 than John Andrews?

21 A. Yes.

22 Q. And you're also trying to get a better
23 understanding as to what works and what does not

1 work from your new position and perspective?

2 A. That's correct.

3 Q. And you're also being advised by the
4 lawyers at Hinckley Allen what's going on with the
5 request and this legal issue related to the BSR?

6 A. That's right.

7 Q. And did you rely upon them
8 considerably, if not extensively, on the issue of
9 what was going on and how to respond?

10 A. I did.

11 Q. Now, in your spare time while all this
12 was going on, did you decide to make some changes?

13 A. Yes, we were in the course of -- I
14 believe it was referred to yesterday, and it was
15 referred to in our organization as the SMO process,
16 the strategy, management and operations review. We
17 determined that the organization was not structured
18 in a way that was as effective as we thought it
19 could be.

20 And so we went through a very painful
21 process of eliminating staff positions, having
22 layoffs for the first time in the organization's
23 history, and in changing the -- the names of some

1 of the services that we were providing, and
2 changing the internal organizational structure.

3 Q. And there was testimony about seven
4 members of a leadership team, do you remember
5 that?

6 A. Yes.

7 Q. Of those seven members, did you make
8 any changes?

9 A. Yes, I did. There were some changes
10 that occurred as a result of the internal
11 organizational change, but there also were some
12 positions that were added as a part of the
13 discussion with the board.

14 We now have a chief information officer
15 which we did not have before who oversees all of
16 our computer processes and a wide variety of things
17 that help the organization to run.

18 We also brought our corporate counsel
19 inhouse. We brought a benefit and coverage counsel
20 inhouse, which essentially cut our legal costs in
21 half. We also changed how we were responding to
22 members, and our member relations department
23 included then our communications department and

1 public affairs manager.

2 We had some staffing changes on the
3 leadership team so that there are currently of the
4 seven members four are new to the leadership team.

5 Q. And the three who are not new is
6 yourself?

7 A. Yes, Sandal Keeffe, and Wendy Parker.

8 Q. And both of those people have testified
9 here today?

10 A. That's correct.

11 Q. Or yesterday.

12 A. Yes.

13 Q. You also mentioned that you would do a
14 survey as part of this review to see how it is
15 that you're doing?

16 A. Yes.

17 Q. And what do our members think of us?

18 A. The response was, I believe, in the
19 vicinity of 95 to 98 percent satisfied or very
20 satisfied with the organization.

21 MR. GORDON: And I believe that would
22 be a BSR exhibit. I think it's -- if I have it
23 right, it's No. 5. It can't be 5. It's our

1 Exhibit 181, LGC 181, and it's also a BSR exhibit,
2 and I can give you the cross-reference.

3 BY MR. GORDON:

4 Q. And if I go to --

5 THE PRESIDING OFFICER: Excuse me,
6 cross-reference number, please?

7 MR. GORDON: Fifty-one.

8 THE PRESIDING OFFICER: Thank you.

9 BY MR. GORDON:

10 Q. And in that exhibit there is a
11 discussion about --

12 MR. GORDON: If you bring up LGC
13 Exhibit 181, page 15.

14 BY MR. GORDON:

15 Q. And is this the chart that you were
16 talking about in the satisfaction survey?

17 A. Yes.

18 Q. And how satisfied are you with your
19 connection to LGC as a reliable provider, about 80
20 percent there very satisfied or satisfied?

21 A. I think it's 90.

22 Q. 90, I'm sorry. If I go to how
23 satisfied are you with HealthTrust's customer

1 service, is that 93 percent?

2 A. Yes.

3 Q. How satisfied are you with the strength
4 of the network provided by HealthTrust through
5 Anthem, that looks like 89 percent?

6 A. Yes.

7 Q. And how satisfied are you with
8 HealthTrust value added service, and that appears
9 to be 81 percent, correct?

10 A. Yes.

11 Q. Fairly decent ratings?

12 A. I think so.

13 Q. I want to ask you some specific
14 questions, and I'm winding down. Did you at any
15 time direct the board of LGC how to manage member
16 funds?

17 A. No.

18 Q. Did you ever direct the board
19 concerning the continuation of the corporate
20 structure that was voted upon by three independent
21 boards in 2003?

22 A. No.

23 Q. Did you ever direct the board when or

1 how to return surplus funds to its members?

2 A. No.

3 Q. I want to now ask you questions about
4 the securities. The investigation or the letter
5 came to you sometime in July, or came to LGC in
6 July of 2009?

7 A. Yes.

8 Q. And do you know when LGC provided to
9 the BSR the participation agreement that they now
10 contend is a security?

11 A. Yes, I believe it was in December of
12 2009.

13 Q. So in December of 2009 that document
14 was provided to the BSR?

15 A. Yes.

16 Q. Did it take 20 months, approximately,
17 for you to hear from the BSR in the form of this
18 suit that that participation agreement they
19 considered to be a security?

20 A. The first time that I heard there was a
21 consideration of a security was in August of 2011.

22 Q. Did I say nine? If I did, I'm sorry.
23 Twenty months.

1 A. Yes.

2 Q. So for 20 months they had that
3 document?

4 A. That's correct.

5 Q. And the first time you ever heard about
6 it was in August of 2011?

7 A. That's correct.

8 Q. You've been in this business a long
9 time?

10 A. I have.

11 Q. Had you ever heard before that a
12 participation agreement was a security?

13 A. No, I had not.

14 Q. At any time were you aware by any
15 direct knowledge that participation agreements
16 were securities?

17 A. No.

18 Q. Did anybody ever suggest to you that it
19 was a security?

20 A. No.

21 Q. Did anybody ever hint to you?

22 A. No.

23 Q. Did any lawyer ever suggest to you that

1 it could be a security?

2 A. No.

3 Q. That it might be a security?

4 A. No.

5 Q. If you had any information that it
6 could be or might be a security, would you have
7 taken action to get a legal opinion from someone,
8 whether BSR or otherwise, as to whether or not?

9 A. Absolutely.

10 Q. And did you rely upon counsel to advise
11 you and LGC as to whether or not these
12 participation agreements were a security?

13 A. Yes.

14 Q. And did any lawyer ever advise you that
15 this participation agreement could be or might be
16 a security?

17 A. No.

18 Q. So you relied upon counsel to give you
19 advice to avoid risk for yourself, correct?

20 A. That's correct.

21 Q. And Hinckley Allen wasn't the only law
22 firm that was providing advice to LGC, correct?

23 A. Correct.

1 Q. There were other lawyers?

2 A. That's correct.

3 Q. David Garfunkle, was he providing
4 advice as well?

5 A. He was providing advice to the Property
6 Liability Trust.

7 Q. Did he ever suggest that, you know,
8 this could be a security?

9 A. Not to my knowledge.

10 MR. GORDON: Two more questions.

11 BY MR. GORDON:

12 Q. Have you ever been accused of fraud or
13 deceit?

14 A. No.

15 Q. Is this the first time?

16 A. Yes, it is.

17 Q. Did you ever intentionally make an
18 untrue statement of material fact to anyone about
19 the matters set forth in the petition?

20 A. No, I did not.

21 Q. Were you negligent by not exercising
22 reasonable care?

23 A. No.

1 Q. And why not?

2 A. Because one would have to know that
3 there was some duty of care. And not having any
4 inkling that this was deemed to be a security, I
5 don't see how I or any member of the board or staff
6 could have made that determination.

7 Q. In all the times you've been traveling,
8 has anyone ever suggested that a participation
9 agreement was a security?

10 A. No.

11 Q. In any of the meetings that you've
12 attended, conferences?

13 A. No. I have attended conferences with
14 other risk pools, and as I have suggested to them
15 that our Bureau of Securities Regulations thinks
16 that our participation agreements are securities,
17 they are incredulous.

18 Q. And, in fact, one of the allegations
19 here was that the membership, the NHMA membership
20 agreement was a security, do you remember that?

21 A. Yes.

22 Q. And the court found under -- using the
23 most liberal of pleading standards that that

1 simply was not the case?

2 A. Yes.

3 Q. I want to finalize.

4 THE PRESIDING OFFICER: That is you
5 have a final question?

6 MR. GORDON: Yup.

7 THE PRESIDING OFFICER: Thank you.

8 BY MR. GORDON:

9 Q. You are the executive director of LGC?

10 A. I am.

11 Q. And you have read the amended petition?

12 A. I have.

13 Q. You've sat through these hearings?

14 A. Yes.

15 Q. And whether it happened before your
16 watch, on your watch, do you believe that LGC or
17 any of its members violated RSA 5-B?

18 A. I do not.

19 Q. And why not?

20 A. In reviewing the decisions that were
21 made and the advice that was given to the board
22 over time, and the advice given to me since I have
23 been in this role, I have relied on the advice that

1 has been in writing and orally that, in fact, we
2 have complied with the provisions of the statute.

3 I've read the statute myself. I am not
4 an expert, but I am able to read a statute, discuss
5 it with our attorneys, and in my view, everything
6 the board has done has been in compliance with RSA
7 5-B.

8 Q. And whether you had a duty or
9 responsibility for the board decisions under the
10 bylaws with regard to the merger, strategic plan,
11 surplus distribution or workers' comp. support, do
12 you believe that any of those decisions by the
13 board violated RSA 5-B?

14 A. I do not.

15 Q. And do you believe that any of the
16 decisions made by the board violated any
17 securities?

18 A. No, I do not.

19 MR. GORDON: With the court's -- your
20 Honor's indulgence.

21 No further questions.

22 THE PRESIDING OFFICER: Thank you,
23 Mr. Gordon. Any questions, Mr. Saturley?

1 MR. SATURLEY: No, thank you,
2 Mr. Mitchell.

3 THE PRESIDING OFFICER: And Mr. Howard?

4 MR. HOWARD: No, thank you.

5 THE PRESIDING OFFICER: Very good.
6 Then the next step would be we would be going on
7 to cross-examination, is that my understanding?

8 MR. GORDON: Yes.

9 THE PRESIDING OFFICER: Let's take a
10 brief three minute break -- three to five minute
11 break in keeping with tradition. And may I see
12 lead counsel, thank you. And we're off the
13 record.

14 (Discussion off the record.)

15 (Recess taken.)

16 THE PRESIDING OFFICER: We have
17 returned from the lunch recess, and Ms. Carroll is
18 on the stand about to receive cross-examination
19 from Mr. Volinsky on behalf of the Bureau of
20 Securities Regulation.

21 Mr. Volinsky, good afternoon.

22 MR. VOLINSKY: Thank you.

23 CROSS-EXAMINATION

1 BY MR. VOLINSKY:

2 Q. Good afternoon, Ms. Carroll.

3 A. Good afternoon.

4 Q. Let me refer you to the replacement 408
5 job description. There are a couple of pieces I
6 want to ask you about, not the whole thing.

7 Under the job description through your
8 former position before becoming interim executive
9 director, you were indeed a member of the LGC
10 leadership team?

11 A. I was.

12 Q. And that required you to provide advice
13 and counsel to the executive director and the
14 board, correct?

15 A. Yes.

16 Q. And to offer suggestions and
17 recommendations regarding policies, correct?

18 A. Correct.

19 Q. And operations?

20 A. Yes. If I could explain that a little
21 more, though, the policies and operations that I
22 was providing advice to the executive director and
23 the board were really those issues that were about

1 personnel policies, or they were about policies
2 dealing with NHMA, and not with the trusts.

3 THE PRESIDING OFFICER: Are those
4 policies further explained in the document, to
5 your knowledge?

6 THE WITNESS: In my job description?

7 THE PRESIDING OFFICER: Yes.

8 THE WITNESS: I am not sure.

9 MR. VOLINSKY: I would represent that
10 they're not.

11 THE PRESIDING OFFICER: Thank you,
12 Mr. Volinsky. Please continue.

13 BY MR. VOLINSKY:

14 Q. And the next section describes
15 essential job functions for the same position, and
16 I just want you to confirm for me that one of
17 those essential functions was to oversee and staff
18 the legislative -- oversees and staffs the
19 legislative policy development committee, drafts
20 legislation and amendments, tracks legislation,
21 et cetera. You also, as an essential job
22 function, testified before legislative committee
23 on the NHMA's behalf, correct?

1 A. Yes.

2 Q. And one of your job functions,
3 essential job functions, was to find sponsors for
4 legislation, correct?

5 A. That's correct.

6 Q. That means that part of your job was to
7 approach legislators and ask them if they would
8 submit bills that the NHMA was supportive of,
9 correct?

10 A. That's correct.

11 Q. And at times you would go to
12 Representative Bob Wheeler for that purpose?

13 A. I don't recall, it may have been many
14 years ago that we asked him to support municipal
15 legislation.

16 Q. At times you'd go to Representative
17 Sandy Keans?

18 A. I don't believe we ever asked her to
19 sponsor legislation. She was supportive as a local
20 official of municipal legislation.

21 Q. Did you consider her to be a friend of
22 the -- first NHMA and then LGC enterprise?

23 A. I think she was a general supporter.

1 Q. And then one of your other essential
2 job functions was to write articles for the
3 various publications, correct?

4 A. Correct.

5 Q. And then to ensure the legal accuracy
6 of articles. Is that articles only that you
7 wrote, or generally?

8 A. They would be articles of the -- that
9 members of our legal team had written for the
10 legislative team.

11 Q. And one of the LGC/NHMA publications is
12 a magazine format kind of publication called Town
13 and City, is it not?

14 A. That's correct.

15 Q. And so is that one of the kinds of
16 publications for which you would ensure legal
17 accuracy, or supervise someone ensuring legal
18 accuracy?

19 A. Yes.

20 Q. Switching topics. You are now the
21 executive director?

22 A. Yes.

23 Q. The executive director is an office

1 specifically referenced in the LGC bylaws?

2 A. It is.

3 Q. And in referencing it, the duties of
4 the executive director are set out, correct?

5 A. Yes.

6 Q. And one of the duties of the executive
7 director is to maintain excess reinsurance, is it
8 not?

9 A. Yes, to the extent that's necessary.

10 Q. Let me show you, this is Exhibit LGC
11 822, and refer you to section 8.3. This is the
12 section that describes the executive director's
13 duties, right?

14 A. Yes.

15 Q. And it says the directors that shall
16 designate and appoint an executive director to
17 administer the daily affairs of the companies,
18 right?

19 A. Yes.

20 Q. And the duties of the executive
21 director shall include, then there are a couple of
22 descriptive duties, and then the last one is and
23 the maintenance of excess reinsurance or other

1 insurance?

2 A. Correct.

3 Q. Excess reinsurance, is another name for
4 that stop-loss?

5 A. Yes.

6 Q. Is another name for that aggregate
7 reinsurance?

8 A. Yes, that's my understanding.

9 Q. And HealthTrust, the HealthTrust
10 program does not currently have external
11 reinsurance, does it?

12 A. That's correct.

13 Q. Staying with that same exhibit, 222,
14 there are sections that describe the powers of the
15 board of directors, correct?

16 A. Yes.

17 Q. And if I ask you about something that's
18 too technical, you don't follow, just tell me
19 that, and I'll dispense with that area. But
20 there's a section called 8.2, powers of the
21 directors, in the bylaws, correct?

22 A. Yes.

23 Q. I want to refer you to K, which is the

1 bottom of page 17 of that exhibit. And you may
2 just read K entirely to yourself.

3 THE PRESIDING OFFICER: Can you read
4 it, Ms. Carroll?

5 THE WITNESS: Very blurry.

6 THE PRESIDING OFFICER: Can we get an
7 exhibit for her, please?

8 BY MR. VOLINSKY:

9 Q. Just read it to yourself, and look up
10 when you're done. Okay?

11 A. Yes.

12 Q. And if you just put it here, I can look
13 at it with you. At the bottom of K, which is
14 about payment of judicial settlements or judicial
15 determinations, including fees and costs, there is
16 a provision that directs that those kinds of
17 payments shall be paid as general administrative
18 expenses to the extent permitted by applicable
19 law. Do you see where I am?

20 A. I do.

21 Q. Do you remember Peter Riemer's
22 testimony from the other day wherein he testified
23 that payments for litigation are properly paid

1 from net assets?

2 A. I don't recall that specific comment.

3 Q. If I represent that he said that, do
4 you know the difference between paying something
5 from net assets versus paying it from
6 administrative?

7 MR. SATURLEY: I'll object.

8 THE PRESIDING OFFICER: Mr. Saturley.

9 MR. SATURLEY: I'll object to the
10 representation that that's what Mr. Riemer said.

11 THE PRESIDING OFFICER: I believe he
12 pulled that back and just asked for a definitional
13 question. But would you ask your question again,
14 Mr. Volinsky?

15 MR. VOLINSKY: Yeah, I actually think
16 it's in his report, which is an exhibit as well.

17 BY MR. VOLINSKY:

18 Q. But my question really is do you know
19 the difference in terms of the operations of LGC
20 between paying something from net assets versus
21 paying them as administrative expenses?

22 A. I do know that in certain circumstances
23 the administrative expenses are included in some of

1 the reserves, but I do note that there's also a
2 specific item called administrative expenses that's
3 allowed in the statute.

4 Q. And do you know on your balance sheet
5 that there's a line item for administrative
6 expenses different from net assets?

7 A. Yes. I always look at the balance
8 sheet when someone asks me a question like that,
9 but.

10 Q. Okay, that's all I need. Thank you.

11 THE PRESIDING OFFICER: Ms. Carroll, do
12 you feel you need that balance sheet in front of
13 you to answer the question?

14 THE WITNESS: Well, as long as you
15 understand that I'm accepting his representation.

16 THE PRESIDING OFFICER: Excuse me,
17 we're looking for the truth here.

18 THE WITNESS: I would never --

19 THE PRESIDING OFFICER: Excuse me, let
20 me interrupt.

21 THE WITNESS: I'm sorry.

22 THE PRESIDING OFFICER: If there's an
23 aid that you feel would assist you in the accuracy

1 of your testimony, I don't want you to be deprived
2 of that. So is your testimony accurate, or do you
3 need to see the document?

4 THE WITNESS: It would be helpful to
5 see the different line for administrative expenses
6 and net assets.

7 THE PRESIDING OFFICER: Very good. Do
8 you have a document that you can give to the
9 witness? Book number, Mr. Volinsky?

10 MR. VOLINSKY: It's going to be 69.

11 THE PRESIDING OFFICER: Book number,
12 Mr. Volinsky.

13 MR. VOLINSKY: Oh, I'm sorry. It's the
14 last book, 5. Just give me a second to get to the
15 page.

16 THE PRESIDING OFFICER: Take the time
17 you need.

18 MR. VOLINSKY: I think what we're
19 talking about would appear on 338 and 339.

20 THE PRESIDING OFFICER: Thank you, 338,
21 339.

22 BY MR. VOLINSKY:

23 Q. Let me just tell you, that's the

1 consolidated financial statement for 2010 for the
2 enterprise. So if you need to turn to another
3 page, you can, but let me tell you, the extent of
4 my question is to ask you if you understand
5 there's a difference between administrative
6 expenses and net assets, and not particular
7 amounts.

8 A. Well, I see that on the consolidated
9 statement that the operating expenses dealing with
10 administrative fees is different under the claims
11 adjustment and administrative expenses and those
12 associated with -- with the administration of the
13 trusts.

14 And I don't want to put words in
15 Mr. Riemer's mouth, but he may have been talking
16 about judicial determinations based on issues
17 dealing with the administration of the trust and
18 not the operating expenses of the organization.

19 Q. Okay. Anything else you think you need
20 to look at in the financial statement?

21 A. I don't.

22 Q. Okay. Thank you.

23 A. Thank you.

1 Q. Switching topics. Am I right that it's
2 your testimony that no lawyer has advised you that
3 the participation agreement signed by members to
4 join one of the risk insurance pools is a
5 security?

6 A. That's correct.

7 Q. Have you ever asked a lawyer for an
8 opinion as to whether or not it was a security?

9 A. In fact, after I was made aware in
10 August of 2011 that there was an allegation that
11 this was a security, I did consult counsel who
12 indicated in his opinion that it was not a
13 security.

14 Q. Who was that?

15 A. Dick Samuels.

16 Q. So we're going to hear from --

17 A. Yes, you are.

18 Q. -- Mr. Samuels. Prior to August of
19 2011, had you ever made that inquiry of a lawyer?

20 A. No, I had not. I had no inkling that I
21 should.

22 Q. So to the extent that you assert that
23 you relied on the advice of counsel --

1 THE PRESIDING OFFICER: Mr. Gordon,
2 please.

3 MR. GORDON: I'll let him finish, but.

4 THE PRESIDING OFFICER: Oh, you will.

5 MR. GORDON: Just to show how
6 argumentative the question is.

7 THE PRESIDING OFFICER: Then why would
8 you want to let him finish the question?

9 MR. GORDON: Just to further prove my
10 point for getting up. It's an argumentative
11 question. The witness' testimony was that she had
12 no inkling that there was a security, and that --
13 and there's going to be no evidence that she had
14 an inkling that it was a security, and so I think
15 it's an argumentative question.

16 And whether or not that comprises
17 advice of counsel or not is for you to make a
18 determination, but her testimony has been that she
19 had an array of lawyers who was advising her each
20 step of the way, that no one had ever raised that
21 as an issue, and that anybody had ever suggested
22 that there was an issue as to whether or not these
23 were securities, then she would have sought

1 additional approach to dealing with that issue,
2 and the suggestion that that doesn't comprise
3 reliance on counsel is beyond my comprehension.

4 THE PRESIDING OFFICER: Well, I'm
5 denying your objection. I don't find the first
6 question in the series to be argumentative. And
7 what was your last comment, defies, what, your
8 comprehension?

9 MR. GORDON: Yes.

10 THE PRESIDING OFFICER: Okay. And
11 shall I say I give much more weight to witness
12 testimony than counsel testimony.

13 MR. GORDON: You can.

14 THE PRESIDING OFFICER: Thank you.
15 Mr. Volinsky, try it again.

16 BY MR. VOLINSKY:

17 Q. As far as reliance on advice of
18 counsel, you had no opinions on this topic,
19 security or not, prior to August of 2011?

20 A. That's correct.

21 Q. So you did not rely on counsel giving
22 you advice on this issue, security or not, prior
23 to August of '11, correct?

1 A. I wouldn't characterize it that way.
2 The way I would characterize it is that we had
3 counsel that was very familiar with the operations
4 of risk pool and corporate entities generally, and
5 there were times when counsel would raise something
6 with the board and say, you ought to steer clear of
7 this, or this issue would create some concern or
8 another.

9 If our operations had risen to the
10 level of a securities operation, I would have full
11 expectation that our legal counsel would have
12 raised that concern with us.

13 Q. So if I understand your advice of
14 counsel reliance prior to August '11, your
15 reliance is on the fact that no one raised
16 anything?

17 A. That's correct.

18 Q. And you didn't ask prior to August?

19 A. That's correct.

20 Q. Okay. The lawyer who offered the
21 August '11 opinion was Mr. Samuels?

22 A. Yes.

23 Q. And he was retained by the Local

1 Government Center, correct?

2 A. Yes.

3 Q. He did not represent you?

4 A. No, he did not.

5 Q. Prior to Mr. Samuels you had
6 Mr. Saturley's firm in place on a number of these
7 issues, correct?

8 A. Yes.

9 Q. And Mr. Saturley's firm represented the
10 Local Government Center, correct?

11 A. That's correct.

12 Q. Not you?

13 A. That's correct.

14 Q. And prior to them, maybe overlapping
15 with them, you had Hinckley, Allen and Snyder
16 representing the Local Government Center?

17 A. That's correct.

18 Q. And not you?

19 A. That's correct.

20 Q. Switching topics. You described for us
21 the series of interactions with your board in
22 which you recommended a certain loan be repaid to
23 HealthTrust to buy workers' comp. with a certain

1 amount of interest included in the loan, correct?

2 A. Yes.

3 Q. And so in that instance you testified
4 that members raising the issue with you led you to
5 come first to the finance committee and then the
6 board to raise this issue with those bodies,
7 right?

8 A. That's correct.

9 Q. And before the members raised this
10 issue, the bureau had raised this issue, correct?

11 A. Correct.

12 Q. But the bureau's raising it isn't what
13 caused you to go to the finance committee, is it?

14 A. No, it isn't.

15 Q. And the bureau's raising it is not what
16 caused you to go to the board, correct?

17 A. That's correct.

18 Q. But you knew that when you wanted the
19 board to take certain kinds of actions, you could
20 present to them and ask, take this action, which
21 in this instance was a note with interest,
22 correct?

23 A. That's correct.

1 Q. Since becoming either interim or
2 executive director, have you ever gone to the
3 board and asked them to take action to reduce the
4 4.2 RBC?

5 A. I have not.

6 Q. Have you ever gone to the board and
7 asked them to take action to return member
8 balance?

9 A. We have had -- the short answer is I
10 have not said specifically this is the amount that
11 you should return, but each year when the board
12 sets the rates, there is a determination of whether
13 there is surplus, and the board makes the
14 determination about the surplus being put into the
15 rates to stabilize the rates.

16 I think the board has had wonderful
17 discussion about that. I have not had any quarrel
18 with what the board has done, have not needed to go
19 to the board. They are fully aware of their
20 responsibilities in the rate setting process about
21 return of surplus, and it comes up every single
22 time that the board sets rates.

23 Q. So you did not go to the board and

1 recommend a reduction to a certain level of
2 surplus, correct?

3 A. I did not, it came from the board.

4 Q. You did not go to the board and
5 recommend a manner of returning surplus other than
6 the rate stabilization crediting that they were
7 doing, correct?

8 A. I did not. The information that I had
9 received both from members of the board and members
10 of local officials in our member communities was
11 that that was a way that worked for our members,
12 and they saw the benefit of returning surplus
13 through rate stabilization. I saw no need, nor was
14 I asked by any member, to suggest otherwise.

15 Q. You were in court yesterday when
16 Mr. McCue testified?

17 A. I was.

18 Q. Did you hear him testify that it is
19 possible legally to have a board in a LLC, do you
20 recall that testimony by Mr. McCue?

21 A. I recall his testimony about the one
22 board servicing the single member LLCs.

23 Q. Okay, let me ask it a different way.

1 Have you ever gone to your board and recommended
2 to them that they create a board of directors to
3 supervise HealthTrust directly?

4 A. A separate board --

5 Q. Yes, ma'am.

6 A. -- from the LGC board? No, I have not.

7 Q. Have you ever gone to your board and
8 suggested to that board that there be a separate
9 board to supervise workers' comp.?

10 A. I have not.

11 Q. Same question with property liability.

12 A. I have not.

13 Q. Have you ever gone to the board and
14 suggested that there should be a separate set of
15 bylaws for HealthTrust specifically?

16 A. I have not.

17 Q. Same question workers' comp.

18 A. No.

19 Q. Same question property liability.

20 A. No.

21 Q. You understand what I mean when I say
22 the current structure of your organization is a
23 parent/subsidiary model?

1 A. I do.

2 Q. Is there another risk pool in the
3 nation that you can identify that operates in a
4 parent/subsidiary corporate model?

5 A. I can't identify that.

6 Q. Have you ever been told -- allowing
7 that you might not remember the name, have you
8 ever been told that there is another
9 parent/subsidiary organized risk pool in the
10 nation?

11 A. I don't recall being told that.

12 Q. You described the NHMA as being a
13 completely voluntary organization?

14 A. Yes.

15 Q. Is that your description?

16 A. Yes.

17 Q. It is accurate, is it not, that a
18 municipality or a school district or a county
19 cannot -- cannot -- participate in the insurance
20 programs offered by the Local Government Center
21 without also joining the NHMA?

22 A. That's correct.

23 Q. And in order to join the NHMA, there's

1 a dues payment, correct?

2 A. Yes.

3 Q. And in recent times the gross dues are
4 about \$900,000 a year from all of the members, is
5 that right?

6 A. In total.

7 Q. Right, that's what I mean. In total,
8 correct?

9 A. Yes, that's correct.

10 Q. So if the members of the insurance
11 plans only wanted to be in the insurance plans and
12 not also be in NHMA, the cost to those members
13 would be \$900,000 less if they weren't required to
14 be in NHMA, correct?

15 A. In part. I think it bears a little
16 context, because the municipal association dues for
17 municipal members cover a variety of services
18 outside of the risk pools. And those municipal
19 members are free to join that organization or not.

20 Not all of those municipal members are
21 necessarily members of our risk pools, but the
22 entities that are not municipalities, school
23 districts and counties, pay a very minimal fee, the

1 highest dues are \$270 a year for the non-municipal
2 entities, because they don't get those extra
3 services.

4 But historically, it reflects the fact
5 that NHMA created the risk pools and had the good
6 will of the organization to develop those risk
7 pools and make them a successful business. And it
8 is the practice of the majority of state leagues in
9 the country to have that connection between the
10 state league and the risk pools.

11 Q. When you say state leagues, that's a
12 reference to -- what's the parent organization,
13 National --

14 A. The National League of Cities.

15 Q. National League of Cities. The
16 National League of Cities has one model and type
17 of approach to creating risk pools and ancillary
18 services, does it not?

19 A. I don't know that I would characterize
20 it that way. I -- I don't know the answer.

21 Q. That's fair. AGRIP, the Association of
22 Governmental Risk Insurance Pools, is a separate
23 organization from the National League of Cities?

1 A. That's correct.

2 Q. And it has a distinctly different
3 approach to the organization of risk pools,
4 especially with respect to this issue of tying to
5 a municipal association, correct?

6 A. Well, it's not directly connected with
7 the state leagues like NLC is.

8 Q. That's what I mean.

9 A. Yes.

10 Q. So the AGRIP model doesn't require the
11 tying arrangement and the National Cities model
12 does?

13 A. No, NLC doesn't require the tying, it's
14 each individual state municipal league that
15 requires the tying arrangement.

16 Q. And all of the state municipal leagues
17 organized following the National Cities model have
18 this tying arrangement?

19 A. No, I would say that's not true.

20 Q. No? Okay.

21 A. Because not all state leagues have the
22 tying. I was just saying the majority do.

23 Q. I misunderstood. Okay, so it's not

1 required in the other states to be tied to the
2 counterparts for the NHMA, right?

3 A. There are some states where they've
4 been developed separately.

5 Q. And in those states the municipal
6 participants in the insurance programs don't have
7 to belong to another association to get their
8 insurance benefits, right?

9 A. That's correct, and typically it's
10 because the state league didn't create the pools.

11 Q. Switching topics. You heard yesterday,
12 did you not, Mr. McCue described John Andrews as
13 an emotional leader?

14 A. I did hear him say that.

15 Q. Would you say that characterization is
16 accurate or inaccurate?

17 A. I wouldn't characterize John Andrews
18 that way.

19 Q. So how would you characterize him as a
20 leader, as executive director?

21 A. I would characterize him as someone who
22 was a tremendous visionary for our organization.
23 He was a part of the organization for 34 years, and

1 much of what we can do to serve our members came at
2 some of the instigation of John Andrews.

3 Now, having done that for a long time,
4 there were some times when I think in addition to
5 being visionary he was also old school about the
6 hierarchy of the organization and the functions
7 that had traditionally been part of the state
8 leagues.

9 But I think all of us who have been
10 involved with NHMA and LGC owe a debt of gratitude
11 for the dedication that he had to bring the
12 organization to where it is today.

13 Q. Have you ever heard Mr. Andrews refer
14 to Paul Genovese?

15 A. I have.

16 Q. And in that context did he refer to him
17 as a traitor?

18 A. I don't recall that language. I know
19 there was not a good relationship between the two
20 gentlemen.

21 Q. And do you recall times when actions
22 taken by the LGC were designed specifically to get
23 back at the traitor, or Paul Genovese?

1 MR. GORDON: I object to him putting
2 the word -- oh, excuse me.

3 THE PRESIDING OFFICER: Thank you,
4 Mr. Gordon, for coming forward.

5 MR. GORDON: I object to him using the
6 word traitor in that question. She said she has
7 not heard it. And he said actions specifically
8 designed to get at that traitor, and I think
9 that's an inappropriate question.

10 MR. VOLINSKY: I can remove it.

11 THE PRESIDING OFFICER: What has just
12 occurred is that question is being withdrawn.
13 Your objection is granted. Go ahead,
14 Mr. Volinsky.

15 BY MR. VOLINSKY:

16 Q. Let me -- just to clarify a point.
17 Don't hold me to the word traitor. Mr. Andrews,
18 over time, has had very disparaging things to say
19 about Paul Genovese, has he not?

20 A. Well, as I said before, I know that
21 there was not a good relationship between the two
22 individuals.

23 Q. And understanding that there was not a

1 good relationship, my question is, did Andrews say
2 things derogatory about Genovese?

3 A. He may have on occasion.

4 Q. All right. And now my question is, did
5 your organization take actions against the
6 organization that Paul Genovese led because of
7 Mr. Andrews' upset with Mr. Genovese?

8 A. I don't believe so.

9 Q. Okay.

10 A. I believe that our board is reasoned
11 enough and deliberative enough, that whether there
12 was any of that expression of negativity about our
13 competitor, that they would look at it from a
14 business perspective.

15 And, frankly, when you have a
16 competitor, what that competitor does is challenge
17 you to be better and to be more accountable, and do
18 things in a way that you rethink over and over
19 again whether you're providing the services
20 appropriately.

21 So there have been times, I think, when
22 our competitors have raised our eyebrows to how
23 we're operating and whether we're doing things as

1 well as we could.

2 Q. You were in court when -- or in the
3 hearing room when Mr. Andrews testified?

4 A. I was.

5 Q. Did you hear him talk about how, at
6 least in part, the decision to subsidize LGC's
7 workers' comp. program was made because workers'
8 comp. at the time was Primex's key program, did
9 you hear that testimony?

10 A. I heard him say that.

11 Q. Is that an accurate or inaccurate
12 characterization that Mr. Andrews made?

13 A. That was the first time I'd heard it.

14 Q. You never heard -- not the specific
15 words, the concept, you never heard that before?

16 A. I had heard the concept that as we were
17 looking at a competitive environment, we had to
18 look at the full range of competition, but I didn't
19 hear it in the context that John Andrews expressed
20 it the other day.

21 Q. Mr. Andrews was the person who hired
22 you, was he not?

23 A. He was.

1 Q. And you worked on his leadership team
2 for a number of years before he retired?

3 A. I did.

4 Q. He at one time had planned to retire at
5 the end of '09, and due to illness moved it up
6 three months, is that right?

7 A. That's -- that's my understanding.

8 Q. And you knew about his plan to retire
9 in '09 about eight years prior to that timeframe,
10 did you not?

11 A. He had expressed a desire to retire
12 over a period of time. I don't know if it was
13 eight years, but it was several years.

14 Q. Do you remember being deposed in this
15 matter?

16 A. I do, and I remember answering a
17 question saying that there was a period of time. I
18 don't remember the number of years I stated.

19 Q. Page 18. Just a quick point. I'll
20 share it with you once Steve gets there.

21 MR. GORDON: Where?

22 MR. VOLINSKY: Eighteen, line 7.

23 BY MR. VOLINSKY:

1 Q. Question, if you started that
2 position -- which is a reference to interim
3 director -- in '09, when did you first learn that
4 John was leaving LGC? Answer, actually, John had
5 talked about his retirement date for about eight
6 or ten years. Did I read that correctly?

7 A. Yes, you did.

8 Q. You are aware, are you not, that when
9 you became interim there was -- there was kind of
10 an introductory article written about you by the
11 inhouse Town and City magazine, is that right?

12 A. Yes.

13 Q. I'd like to ask you to turn to book 1,
14 Exhibit 36. I'll give it to you. Book 1,
15 Exhibit 36.

16 You recognize that as the article
17 written about you when you were named interim
18 executive director?

19 A. I do.

20 MR. VOLINSKY: I move to strike the
21 identification on Exhibit 36 and ask for its
22 admission.

23 MR. GORDON: No objection.

1 THE PRESIDING OFFICER: Any objection,
2 Mr. Howard?

3 MR. HOWARD: No.

4 THE PRESIDING OFFICER: Mr. Saturley?

5 MR. SATURLEY: No.

6 THE PRESIDING OFFICER: If during the
7 afternoon if I don't see the objection, I won't go
8 around the room. Thank you. I know you will all
9 use it against me at some point perhaps, but I
10 will put it on the record I see nothing. Go
11 ahead, Mr. Volinsky.

12 BY MR. VOLINSKY:

13 Q. There is an introductory paragraph to
14 the article which happens to be in italics, is
15 that right?

16 A. Yes.

17 Q. And in that italicized paragraph that
18 you have a copy in front of you as well, you are
19 referred to as LLC's general counsel since 2000,
20 are you not?

21 A. I am.

22 Q. And then this article is done in a
23 question and answer format. The second question

1 asks you -- T&C is a reference to the magazine
2 itself, right, Town and City?

3 A. Yes.

4 Q. How have your daily duties changed as
5 LGC's general counsel, a position you've held with
6 the organization for nearly nine years. That's
7 what the article says, does it not?

8 A. It does.

9 Q. And then the article provides your
10 answer. Mine's a copy of the highlights so some
11 of it's a little hard to read, but it's in front
12 of you so you can see as well.

13 A. Yes.

14 Q. And then there's more biographical
15 information about when you joined the municipal
16 association correct?

17 A. Correct.

18 Q. There's a question about the major
19 challenges you foresee, correct, on the second
20 page?

21 A. There is.

22 Q. And then what keeps you motivated?

23 A. Yes.

1 Q. Has there ever, to your knowledge, been
2 a retraction, correction, notice of error
3 published anywhere at any time about this article?

4 A. No.

5 Q. Thank you. You made mention about
6 member surveys and showed us the pie charts with
7 the results?

8 A. Yes.

9 Q. I think that was from the '09 fact
10 update publication of your organizations, does
11 that sound right to you?

12 A. I think it was based on a 2010.

13 Q. '10? I'll accept that. My question is
14 on a slightly different topic. Do you know if the
15 LGC or its predecessor organizations ever
16 conducted a survey about the decision to organize
17 into a parent subsidiary model?

18 A. I don't know, but I don't believe so.

19 Q. Do you know if the LGC or any of its
20 predecessors conducted a survey about the decision
21 to subsidize workers' comp. with HealthTrust
22 money?

23 A. I don't believe so.

1 Q. Let's talk about the subsidy which your
2 organization calculates to be 17.1 million, a
3 little bit more, correct?

4 A. Correct.

5 Q. Those were monies that your
6 organization calculated as having gone from
7 HealthTrust to workers' comp., is that right?

8 A. Well, I know that that was the end
9 result, but the money was actually paid to LGC
10 parent and then distributed. It was part of the
11 strategic plan.

12 Q. Let's work with the end result then.

13 A. Okay.

14 Q. If you understand that part of it.

15 A. Yes.

16 Q. You would agree with me that that is a
17 debt of the workers' comp. program owed to the
18 HealthTrust program?

19 A. It is now, based on the note.

20 Q. And now do you consider that to be an
21 enforceable debt as the executive director of the
22 organization?

23 A. I consider as executive director that

1 that note is required to be paid.

2 Q. As the executive director, are you
3 seeking relief for workers' comp. from paying the
4 17.1 million back to HealthTrust?

5 A. No.

6 Q. Do you agree it should be paid?

7 A. Yes.

8 Q. Do you agree that however good or bad
9 workers' comp's current status is, it could not
10 have gotten to its current status without the
11 payment of those subsidies over the years from '04
12 through '10?

13 A. Yes.

14 Q. May I refer you to Exhibit 37, which
15 should also be in book 1. Do you recognize the
16 first page of 37 to be part of a response to a
17 request for information to your organization made
18 by the bureau?

19 A. If you represent that it is, I will
20 believe that. There's been so much requested
21 that --

22 Q. I believe it is.

23 A. Okay.

1 (Discussion off the record.)

2 MR. VOLINSKY: I'll withdraw the
3 representation of what's being suggested to me. I
4 really want to take you to the second and third
5 pages.

6 THE PRESIDING OFFICER: Excuse me, off
7 the record. So we pick up with your statement
8 now; everything that you had with other counsel is
9 being reported as unintelligible.

10 MR. VOLINSKY: That's fine. And based
11 on the unintelligible --

12 MR. SATURLEY: May I just understand
13 what the state of the record is? His question is
14 withdrawn, and his representation is withdrawn.

15 THE PRESIDING OFFICER: That's correct.
16 It's just conversations with your table that was
17 recorded as unintelligible.

18 MR. VOLINSKY: That's fine. I'll save
19 it. We can close 37, I'll go to a different
20 topic.

21 THE PRESIDING OFFICER: Whatever it was
22 it must have been successful, Mr. Saturley.

23 MR. SATURLEY: As long as the record

1 says unintelligible and not unintelligent.

2 THE PRESIDING OFFICER: I was very
3 careful.

4 MR. SATURLEY: Thank you.

5 MR. VOLINSKY: Book 2.

6 THE PRESIDING OFFICER: Mr. Volinsky is
7 back questioning, book 2.

8 BY MR. VOLINSKY:

9 Q. And Exhibit 55. You'll see they're all
10 tabbed. Do you recognize 55 as part of a response
11 by the Local Government Center to document
12 requests made by the bureau?

13 A. Yes.

14 MR. VOLINSKY: I'd move to strike the
15 ID on 55.

16 THE PRESIDING OFFICER: Mr. Gordon.

17 MR. GORDON: If I may consult with
18 Mr. Saturley.

19 THE PRESIDING OFFICER: Mr. Gordon.

20 MR. GORDON: My problem is I do not
21 know what version this is. My understanding is
22 this comes from Mr. McCue's file, I believe.

23 THE PRESIDING OFFICER: Well, just to

1 speed things along, let's take a two-minute
2 recess, and you guys all talk and determine its
3 origin. We're off the record.

4 (Discussion off the record.)

5 THE PRESIDING OFFICER: Mr. Volinsky,
6 please continue.

7 MR. VOLINSKY: Thank you.

8 BY MR. VOLINSKY:

9 Q. You still have book 2?

10 A. I do.

11 Q. Turn to Exhibit 53. Are you there?

12 A. I am.

13 Q. You recognize 53 is a letter dated
14 August 26, '11 from the general legal counsel for
15 the city of Dover to you?

16 A. I do.

17 Q. And in this letter does general counsel
18 from Dover request reimbursement for what he
19 characterizes as Dover's contribution to the
20 workers' comp. subsidy?

21 A. Yes.

22 Q. And then do you respond to him in the
23 letter in the following couple pages of the

1 exhibit?

2 A. I do.

3 MR. VOLINSKY: Move to strike the ID on
4 53 as well.

5 BY MR. VOLINSKY:

6 Q. So this is August '11, right?

7 A. Yes.

8 Q. Turn to 54. Do you recognize 54 is a
9 letter from general -- city counsel, he's called,
10 for the city of Portsmouth explaining his city's
11 position with respect to return of surplus
12 funds -- yeah, return of surplus funds used to
13 subsidize workers' comp?

14 A. Yes.

15 Q. And did the city of Portsmouth through
16 Mr. Sullivan actually appear at a board meeting of
17 the Local Government Center?

18 A. Yes, he did.

19 Q. And did he make similar arguments to
20 your board requesting return of strategic planning
21 payments?

22 A. He did request a return.

23 Q. And his request for return was not

1 limited to the 17 million that went from
2 HealthTrust to workers' comp, it included all
3 strategic planning payments made by HealthTrust,
4 whether they went to the parent organization and
5 stayed there, or when and then were conveyed to
6 workers' comp, is that not right?

7 A. I don't recall without looking at the
8 document that Attorney Sullivan and John Bohenko
9 sent to me to share with the board. I don't
10 believe this is what it is, but it may be included
11 in the letter.

12 Q. Okay. There have been similar requests
13 for subsidy repayments made by the city of
14 Claremont, correct?

15 A. I don't believe the city of Claremont.

16 Q. By the city of Rochester?

17 A. There have been questions that have
18 been raised. My understanding is that there have
19 been a limited number of requests, including the
20 town of East Kingston, and the town of Warren, but
21 I don't recall that Rochester and Claremont
22 actually asked for monies.

23 Q. Okay. So let's see, go to Exhibit 41

1 for me, same book. Turn to page 9 to start with.
2 I'll represent -- well, you were in court -- in
3 the hearing room yesterday. Forty-one is the
4 series of documents from Mr. McCue's file that we
5 talked about at the very end of the day, you
6 remember that discussion?

7 A. Yes.

8 Q. So page 9 begins a series of email
9 exchanges between you and Jim Sullivan, correct?

10 A. Yes.

11 Q. And Mr. Sullivan is someone who emailed
12 you from Claremont about the subsidy, correct?

13 A. He did.

14 Q. And you went to Mark McCue for advice
15 on how to respond? It's the top.

16 A. Yes, it was a right to know request.

17 Q. And you eventually drafted, or sent
18 over your signature, at least, a letter that
19 appears at page 11, right?

20 A. Yes.

21 Q. And in your letter you explain that
22 there's a set of board minutes that are still in
23 draft form, and you send the draft to Mr. Sullivan

1 in Claremont?

2 A. Correct.

3 Q. As a response, in part?

4 A. Yes.

5 Q. Correct?

6 A. Yes.

7 Q. Go to page 25, same exhibit. Again,
8 we're still in Mr. McCue's file. Do you recognize
9 25 as the beginning of an exchange wherein your
10 staff is corresponding back and forth about how to
11 craft a response to John Scrutin, the city manager
12 for the city of Rochester, about the expenditure
13 of workers' comp subsidy money?

14 A. I do.

15 Q. And I think you happened to be away at
16 the time of this --

17 A. Yes.

18 Q. -- correspondence, and Ms. Keeffe
19 responded in your place, correct?

20 A. Correct.

21 Q. After receiving advice from Mr. McCue
22 in the December 2010 timeframe, correct?

23 A. Correct.

1 Q. Then if you'll go to page 33, you also
2 received inquiry at the Local Government Center
3 about this workers' comp subsidy from the town of
4 Northampton?

5 A. We did.

6 Q. And then there's a repeat following
7 that of the John Scrutin letter of Rochester. It
8 just happens to be in that order, I don't think it
9 means anything.

10 A. Correct.

11 Q. Keep exhibit book 2 handy, because
12 we're going to go back to it. I'm going to send
13 you to Exhibit 66, which should be book 3.

14 MR. VOLINSKY: Book 3, Exhibit 66.

15 THE PRESIDING OFFICER: Keep 2, but go
16 to 3, Mr. Volinsky?

17 MR. VOLINSKY: Yup, because we're
18 coming back to 2.

19 THE PRESIDING OFFICER: Book 3,
20 Exhibit 66.

21 MR. VOLINSKY: Right.

22 BY MR. VOLINSKY:

23 Q. All the way towards the back, go to

1 page 606. It's way at the back because it's more
2 recent in time. Are you there?

3 A. I am.

4 Q. 66 -- 606 in Exhibit 66 is a three-page
5 set of minutes concerning the Local Government
6 Center's board of directors retreat from last
7 July, am I right?

8 A. You are correct.

9 Q. And that is your most recent board
10 retreat, correct?

11 A. That's correct.

12 Q. And you have at the top the names and
13 towns or school districts from which each board
14 member in attendance came from, correct?

15 A. Yes.

16 Q. And then you have an indication of the
17 staff present for the retreat immediately below
18 that?

19 A. Correct.

20 Q. Now, in July of '11 you already had
21 notice of the bureau's investigatory concerns
22 about the Local Government Center, did you not?

23 A. Yes.

1 Q. It had already become something that
2 was taking your attention as the executive
3 director, right?

4 A. That's correct.

5 Q. And one of the things that the Local
6 Government Center did in response to the
7 investigatory concerns was to organize its
8 communications modalities to respond to the
9 investigative concerns, correct?

10 A. I'm not sure what you mean by that.

11 Q. Okay, let me break it down. You have a
12 web site?

13 A. We do.

14 Q. From time to time you post on the web
15 site?

16 A. Yes.

17 Q. And time to time you post about this
18 case on the web site?

19 A. That's correct.

20 Q. And you posted about the investigation
21 on the web site?

22 A. Yes.

23 Q. From time to time you would send

1 written messages to members or the leaders of
2 members of your risk pools, correct?

3 A. Yes.

4 Q. Sometimes it's in paper, sometimes it's
5 through an emailed correspondence, correct?

6 A. Correct.

7 Q. From time to time you've talked about
8 this enforcement proceeding and the predecessor
9 investigatory process through those
10 communications, correct?

11 A. Yes.

12 Q. You've also encouraged officials
13 associated with members to write letters to
14 newspapers and the like about these proceedings
15 and the investigatory proceeding, correct?

16 A. When we've had members who have been
17 concerned about it and have asked what they could
18 do, we have suggested that the more information
19 that there is in the public about the operations of
20 LGC, the better.

21 We had operated for many years as a
22 member organization. We were designed to serve the
23 members. With this investigation process and the

1 enforcement process we were thrust into a public
2 arena that we had not experienced before, and what
3 became very clear was that members of the public
4 did not know our organization, did not understand
5 our organization, and the people best able to
6 explain who we are and what we do are those who are
7 part of our organization.

8 Q. And the communications efforts of your
9 organization have gone forward, including --
10 including to this day tweeting from the courtroom,
11 correct?

12 A. There have been tweets.

13 Q. During the proceeding?

14 A. Yes.

15 Q. And so part of the LGC's -- an
16 important part of the LGC's response to the
17 investigation and the enforcement has been around
18 this communications piece using all the different
19 ways you communicate, correct?

20 A. We think that communication is
21 important.

22 Q. And so at this board retreat, priority
23 No. 1 decided at the retreat was to put together a

1 communications plan to respond to the Bureau of
2 Securities regulation report, correct?

3 A. Correct.

4 Q. And there was a motion made in
5 response, or as part of that priority, to create
6 an ad hoc committee of communications, correct?

7 A. Yes.

8 Q. And the very first committee member
9 listed on that committee is Karen Liot Hill?

10 A. Karen Liot Hill, yes.

11 Q. Karen Liot Hill. Ms. Hill was the
12 subject of Mr. McCue's testimony yesterday, were
13 you here for that?

14 A. Yes.

15 Q. This assignment to this communications
16 committee, that was a pretty important assignment
17 for a board member, wasn't it?

18 A. Well, I think all the assignments that
19 the board members have are important. It was one
20 that there were members of the board who wanted to
21 participate.

22 Q. Would your board have assigned --

23 THE PRESIDING OFFICER: Excuse me,

1 Mr. Volinsky.

2 MR. GORDON: I'm not precisely sure how
3 long this is going to go or what the relevance is
4 as to what the board was doing in July 2011 as far
5 as press releases. I don't think that's germane
6 to the underlying issues in this case, so for
7 relevancy reasons, I object.

8 THE PRESIDING OFFICER: Mr. Volinsky.

9 MR. VOLINSKY: My very next question
10 would have been, and I would proffer, is would the
11 board have assigned this important responsibility
12 to a board member who was incompetent or ill
13 informed about the operations of the Local
14 Government Center.

15 THE PRESIDING OFFICER: Mr. Gordon,
16 second time.

17 MR. GORDON: First of all, that wasn't
18 Mr. McCue's testimony, but I'll stand on my
19 objection on relevancy grounds.

20 THE PRESIDING OFFICER: Thankfully we
21 have a stenographer, so the record will eventually
22 reveal itself without comment. With respect to
23 relevancy, your objection is denied. You can

1 continue, Mr. Volinsky.

2 MR. VOLINSKY: Thank you. If I can try
3 and remember the question I just proffered.

4 THE PRESIDING OFFICER: You were asking
5 about Ms. Liot Hill --

6 MR. VOLINSKY: Right.

7 THE PRESIDING OFFICER: -- importance,
8 et cetera, of the response of the LGC --

9 MR. VOLINSKY: Thank you.

10 THE PRESIDING OFFICER: -- at this
11 point in time.

12 MR. VOLINSKY: Thank you.

13 BY MR. VOLINSKY:

14 Q. The board would not have assigned a
15 board member the board considered to be either --
16 well, the board considered incompetent, would it?

17 A. Well, I'm not sure that I can speak for
18 the board in this, but I don't think the board
19 thought any of its members was incompetent. I
20 certainly did not.

21 Q. And same question, the board would not
22 have assigned Ms. Hill to this role as a member of
23 the ad hoc communications committee if the board

1 considered Ms. Hill to be ill informed or
2 uninformed about the operations of the Local
3 Government Center, would it?

4 A. That's correct.

5 Q. We've heard testimony from I think just
6 about every witness called by the Local Government
7 Center, but let me focus you on Mr. Enright's
8 testimony to the effect of the board being very
9 engaged, active and robust conversations
10 happening. Do you recall that testimony?

11 A. Yes, I do.

12 Q. Do you agree with Mr. Enright's
13 characterization to the extent I've properly
14 stated it?

15 A. Yes.

16 Q. At this very same retreat, which was
17 just last summer, was there not discussion about
18 altering the roles, responsibilities and
19 structures of the board, in part because there was
20 less than full participation by board members?
21 And I'm referring you specifically to priority
22 No. 2.

23 A. I'm not sure I understand. There was

1 discussion about restructuring, but not because
2 people weren't there.

3 Q. Okay. And so No. 2 doesn't have
4 anything to do with a lack of full participation
5 by board members?

6 A. No. Actually, the restructuring of the
7 board discussion stemmed from conversations that we
8 had had through the SMO process about whether the
9 organization continued to be -- following eight
10 years of the reorganization in 2003, whether it was
11 still designed to provide the best efficiencies
12 possible. And there was a lot of discussion about
13 the relationship between LGC and the NHMA, LLC.

14 Q. So at the time of this board meeting,
15 you were there for the discussions, did the board
16 consider itself to be fully engaged and active as
17 board members?

18 A. I believe so.

19 Q. Turn the page. Look at priority No. 4
20 for me, please. Does that not say board
21 engagement, it is important to improve engagement
22 of all board members, including better attendance
23 at meetings, increased participation, involvement

1 and attention, paren, less use of BlackBerries and
2 computers during meetings, if reasonable, closed
3 paren. It is also important for board members to
4 be knowledgeable about LGC operations. Is that a
5 fair reading?

6 A. That's a fair reading.

7 Q. And so are you saying that there was
8 not discussion about the need to improve board
9 engagement during last summer's retreat?

10 A. I'm not saying that. What I'm saying
11 is that it doesn't mean that the board isn't
12 engaged by saying that they want to improve their
13 engagement.

14 There are always some folks who are
15 very busy with the things going on in their own
16 communities or their own school districts, and we
17 had had a couple of members who had a very
18 difficult time attending meetings, and so that
19 became a subject of discussion. It typically is
20 because of the duties that our board members have
21 to carry out in their own communities.

22 Q. Did you have board members who were
23 inattentive when they actually showed up for

1 meetings because they were on their BlackBerries
2 and computers during meetings?

3 A. There was some usage of BlackBerries,
4 and so the board believed that it ought to have
5 that discussion to make sure that we were always
6 aware that it was important in fulfilling fiduciary
7 duties not to stray too far.

8 Clearly managers and elected officials
9 may have to take phone calls in the middle of a
10 meeting, or may have to excuse themselves to review
11 a message that's been given, but that's the kind of
12 thing that if the board was disengaged, they
13 wouldn't talk about.

14 Q. So this is an actual board minute for
15 the retreat where a priority is identifying less
16 use of BlackBerries and computers.

17 A. Yes.

18 Q. Were you unable just to make a quiet
19 comment to a board member who happened to be using
20 a BlackBerry to end that practice? Did it have to
21 go to this level of formal priority in retreat to
22 get it addressed?

23 A. I think that when the board discusses

1 issues about their engagement and the governance,
2 that they talk about it in terms of, well,
3 so-and-so may have been on his or her BlackBerry at
4 the last meeting, but it isn't typical for that
5 person, someone else may do it more often.

6 It's important for the entire board to
7 understand that it may be distracting to other
8 members who are not doing that, and so just taking
9 one person aside doesn't allow that level of
10 discussion with the board.

11 Q. Your entire board didn't even show up
12 for this retreat, did they?

13 A. Well, no, but it's very difficult to
14 find a time during a two-day period in the middle
15 of July, which is when we were required to have it
16 based on all of the things that were going on in
17 the organization.

18 So we knew that it was not going to be
19 100 percent participation, but, nonetheless, the
20 board wanted to proceed with it and to have those
21 discussions, and then to share the minutes with the
22 rest of the board and have further discussion.

23 Q. So your board by its bylaws is set up

1 for 31 people, correct?

2 A. It is.

3 Q. You currently have 28?

4 A. We actually have 26 now.

5 Q. Twenty-six now?

6 A. Yes.

7 Q. When is the last time you had 31?

8 A. Perhaps a year ago.

9 Q. When you have however many board
10 members, whether it be the total 31 or 28 or 26,
11 do you have a running tally that you keep of which
12 board members attend which board meetings?

13 A. We don't have a running tally, but
14 periodically I will look through the minutes to see
15 what attendance board members have.

16 Q. And do you find some that are missing
17 fairly often?

18 A. We have in the past found that.

19 Q. And do you then make some effort to
20 either encourage their attendance or their
21 departure?

22 A. Yes. I bring it up with the board
23 chair, and then we discuss a process.

1 Q. Any of that in writing?

2 A. No, but in the bylaws there's a
3 provision for removal of those board members who
4 are not participating fully, but the discussions
5 I've had in the last three years have been oral
6 discussions with the board chair.

7 Q. At the end of this retreat at which you
8 discussed engagement, was there a plan to adopt a
9 mentoring process for new board members?

10 A. Actually, we do have a mentoring
11 process where all of the new board members that
12 came on in November after the annual meeting were
13 assigned an experienced board member to ask
14 questions in the event that board members wanted to
15 talk board to board and not to inquire of staff
16 about certain processes.

17 Q. And that happened -- that started this
18 November -- November of '11, sorry.

19 A. Yes.

20 Q. Before that there wasn't a mentoring
21 process?

22 A. Not a formal one.

23 Q. Thank you. I asked you about

1 Ms. Keans, the representative, and whether she was
2 friendly to the Local Government Center. Let me
3 ask you, do you consider Ms. Keans an advocate for
4 the Local Government Center in the legislature?

5 A. I don't put it in that context. I
6 think she's an advocate of local government. She
7 is a city councilor and is a long term legislator.
8 She has voted with us on various issues, and she's
9 voted against us on some issues.

10 Q. There was a complaint that was filed
11 against the other two risk pools?

12 A. Yes.

13 Q. Regarding whether they are in
14 compliance or out of compliance with 5-B?

15 A. Correct.

16 Q. That was filed by Ms. Keans, was it
17 not?

18 A. Yes.

19 Q. Your organization gave Ms. Keans input
20 into that complaint filing, did it not?

21 A. She asked some questions of our
22 organization.

23 Q. And you provided her information that

1 then she included in her complaint against the
2 competitor pools, correct?

3 A. We answered her questions.

4 Q. And she included those answers -- well,
5 you've seen the complaint, haven't you?

6 A. I've seen the complaint.

7 Q. Yes.

8 A. I don't know if she included all of the
9 answers, she was not speaking just to me. She
10 spoke with other members of staff.

11 Q. Okay. So book 2. You can close
12 Exhibit 66 for me. Go to Exhibit 41, again which
13 is Mr. McCue's file.

14 Well, let me ask you, was your
15 organization aware of any effort by Mr. McCue to
16 intentionally understate for the public the extent
17 of the errors with respect to the Delaware
18 filings?

19 A. No.

20 Q. Let me turn you to page 42. You'll see
21 42, there's one line on 43 as well, is a string of
22 emails that starts at the bottom of the page?

23 A. Yes.

1 Q. And then works up in time?

2 A. Yes.

3 Q. And so the bottom of the page email is
4 from Cordell Johnston?

5 A. Yes.

6 Q. And he is an attorney at the Local
7 Government Center?

8 A. Yes.

9 Q. And he copied you on his email to Mark
10 McCue dated May 18 at 6:09 a.m.?

11 A. Correct.

12 Q. And then Mark McCue responded to
13 Mr. Johnston in the email that's the top third of
14 the page, top half of the page, correct?

15 A. Yes.

16 Q. At just before eight the same morning?

17 A. Yes.

18 Q. Read that to yourself so you know
19 what's there.

20 A. Yes.

21 Q. In this email back to Mr. Johnston, did
22 Mr. McCue write about what makes it messy is that
23 Bob Lloyd never filed a Delaware side of the

1 merger back into the New Hampshire LLCs in 2003.
2 I'm having someone look into confirming that the
3 New Hampshire side of the merger was voidable and
4 not void, correct?

5 A. Yes.

6 Q. And then does Mr. McCue go on to
7 further note and also note that he merged the 292
8 New Hampshire courts directly in Delaware LLCs. I
9 would have done them into Delaware nonprofits and
10 then merged the Delaware nonprofits with Delaware
11 LLCs and then back into New Hampshire LLCs -- and
12 here's the point I want to ask you about -- but I
13 hope that is a complexity that others won't pick
14 up on. Do you see where I am?

15 A. I do.

16 Q. So my question is really about that
17 last sentiment. Are you aware from discussions in
18 your organization with or about Mark McCue that
19 he, Mr. McCue, thought there was an error that he
20 hoped others would not pick up on?

21 A. I was not. The first time I saw this
22 was about a week ago.

23 Q. Okay. Is it accurate to say that

1 Mr. McCue was not simply a lawyer giving legal
2 advice to the LGC, but that he also helped the LGC
3 with public relations strategy?

4 A. Well, because he was so involved in the
5 organization, he was often present when we had
6 those discussions. He wasn't giving us legal
7 advice, but we were checking in with him to assure
8 that we didn't run afoul of anything in the legal
9 context.

10 Q. Well, for example, did Mr. McCue advise
11 that your organization should make public
12 relations releases in advance of the bureau's
13 investigative report to kind of take the sting out
14 of it?

15 A. I don't recall. I do recall that those
16 discussions were had, but I don't recall who made
17 the discussion.

18 Q. Was Mr. McCue present for those
19 discussions?

20 A. I -- I just don't recall.

21 Q. Okay. Turn to page 44 for me. You'll
22 see that this is an email correspondence that
23 starts on 44. I want to direct you to the email

1 that starts at the bottom of 44, and so it goes on
2 to 45. Do you see where I am? It says from Mark
3 McCue, Saturday, May 8, 2010, 5:07 p.m.

4 A. Yes.

5 Q. And you're one of the recipients, as
6 well as Jessie Levine, John Steiner and Mark
7 Halloran?

8 A. Yes.

9 Q. And the subject is Dave Kidder?

10 A. Yes.

11 Q. In the full paragraph at the top of
12 45 -- yeah, you can read it all. Just look up
13 when you're done with that email.

14 A. All right.

15 Q. In that paragraph, first full paragraph
16 at the top of 45. Did Mr. McCue write, I think we
17 need to prepare a, quote, this is what you can
18 expect to see in the SOS report, and here is what
19 we have to say about it, end quote, kind of report
20 and publish it, all caps, before the SOS makes its
21 findings. He wrote that?

22 A. Yes. If I could put it in context now
23 that I've read all of it, it was around the time

1 that there was a legislative hearing with
2 amendments at the end of the legislative session
3 initially stating that we should keep 5 percent in
4 our reserve; not a 4.2 RBC, but 5 percent of
5 claims.

6 And there was a hearing that went for
7 six and a half hours at the senate where there was
8 a book this size that was called the Senate
9 Briefing Book, and it had all manner of information
10 about LGC that was incomplete, and -- but that the
11 senate was using as gospel.

12 Our representatives, including our
13 board chair, our attorney, were on the witness
14 stand in a senate legislative hearing for three
15 hours where they were grilled about issues that no
16 one had ever talked to the organization about, and
17 testimony from the bureau about what we seemed to
18 be doing.

19 And it seemed to us at that point that
20 it was quite clear that the world at large did not
21 understand our organization, and clearly, based on
22 that hearing, the senate didn't understand what our
23 organization did.

1 So in the context of that, I think his
2 message is that we need to be prepared to tell the
3 world who we are before it is described for the
4 world by someone else.

5 Q. In this same timeframe did you make an
6 effort to investigate whether the Secretary of
7 State was being manipulated by David Lange and the
8 firefighters?

9 MR. SATURLEY: Mr. Mitchell.

10 THE PRESIDING OFFICER: Mr. Saturley.

11 MR. SATURLEY: At this point I'm going
12 to object to the relevance. I think this has gone
13 a long way away from the charges that are
14 pertained in the petition, and I'm going to ask
15 about this particular inquiry, move on. This is
16 response to the legislative she is talking about.
17 It has little to do, if nothing, with the charges
18 in the petition.

19 THE PRESIDING OFFICER: Mr. Volinsky.

20 MR. VOLINSKY: In the interest of
21 comity I will withdraw the question. But I have
22 one other question to ask.

23 THE PRESIDING OFFICER: Granted,

1 Mr. Saturley, on your objection, but he's
2 withdrawn it, so get ready. Next question,
3 Mr. Volinsky.

4 BY MR. VOLINSKY:

5 Q. In Mr. McCue's email, which is the one
6 you were reading, responding to, did Mr. McCue not
7 write that we need to craft our story. As Bill
8 Saturday eloquently described, this needs to
9 succinctly describe all of the good things that we
10 do, and then we have to stick with it
11 relentlessly.

12 Did Mark advise that to you and the
13 others in this email?

14 MR. SATURLEY: Same objection.

15 THE PRESIDING OFFICER: Same objection
16 by Mr. Saturley. Denied this time. Go ahead,
17 Mr. Carroll.

18 A. It is clear in the language that he was
19 suggesting that we need to get the good message of
20 LGC out so that people could hear it and understand
21 that there was more than what they were hearing.

22 MR. VOLINSKY: If I can have one
23 moment, I may be done.

1 THE PRESIDING OFFICER: You're done
2 with that topic.

3 MR. VOLINSKY: Yes.

4 THE PRESIDING OFFICER: I'm sorry, that
5 was a statement, not a question.

6 MR. VOLINSKY: Yes, I am, and you were
7 accurate.

8 THE PRESIDING OFFICER: Thank you.

9 MR. VOLINSKY: I have no further
10 questions.

11 THE PRESIDING OFFICER: Very good.
12 Mr. Gordon, do you have redirect, sir?

13 MR. GORDON: I do.

14 THE PRESIDING OFFICER: Do you have an
15 estimate of time, Mr. Gordon? And the reason I
16 ask is Mr. Howard approached me during the break
17 with respect to -- is it Mr. Samuels?

18 MR. HOWARD: Yes.

19 THE PRESIDING OFFICER: Do you need to
20 make a phone call to Mr. Samuels?

21 MR. HOWARD: Let me go check.

22 THE PRESIDING OFFICER: Okay, can
23 Ms. Myers continue representation?

1 MR. HOWARD: Oh, yeah.

2 THE PRESIDING OFFICER: Please,
3 Mr. Gordon, go ahead.

4 MR. GORDON: Probably if we take a
5 break we can coordinate questions, and it will
6 become a lot quicker.

7 THE PRESIDING OFFICER: He's out
8 looking for Mr. Samuels now, and we'll take a
9 brief pause, because I can through both doors --
10 that is I can see Mr. Howard, I don't see
11 Mr. Samuels. I see Mr. Howard looking east and
12 looking west.

13 MR. GORDON: So do you want me to
14 proceed, or do you want me --

15 THE PRESIDING OFFICER: I can hold, if
16 you think it's going to save us time. I thought
17 you and Mr. Howard had already spoken.

18 MR. GORDON: No.

19 THE PRESIDING OFFICER: Okay,
20 three-minute break in place, with the traditional
21 exceptions.

22 (Recess taken.)

23 THE PRESIDING OFFICER: Returning to

1 the record after that brief recess, Mr. Gordon, on
2 redirect.

3 MR. GORDON: Yes.

4 REDIRECT EXAMINATION

5 BY MR. GORDON:

6 Q. I just have some brief questions. I'll
7 ask them quickly and then move on. No. 1, the
8 Town and Country article where it said that you
9 were LGC general counsel, were you asked that
10 question at your deposition?

11 A. Yes.

12 Q. And did you tell Mr. Volinsky it was a
13 mistake and inaccurate?

14 A. Yes, I did.

15 Q. And is it and was it inaccurate?

16 A. Yes.

17 THE PRESIDING OFFICER: What statement
18 was that?

19 MR. GORDON: In the Town and Country
20 magazine.

21 THE PRESIDING OFFICER: I understand
22 the exhibit, but --

23 MR. GORDON: That she was general

1 counsel of LGC.

2 THE PRESIDING OFFICER: Thank you.

3 BY MR. GORDON:

4 Q. You were asked a question about
5 Mr. Sullivan making an inquiry?

6 A. Yes.

7 Q. Is a member, private citizen,
8 selectman, do you know?

9 A. He's a private citizen who periodically
10 makes right to know requests of the organization.

11 Q. Has the town ever, to your knowledge,
12 submitted a formal request?

13 A. No.

14 Q. There were questions asked about
15 Ms. Liot Hill?

16 A. Yes.

17 Q. And why in July 2011 she was on the
18 board to deal with communications issues?

19 A. Yes.

20 Q. And there was also reference made to
21 her earlier email?

22 A. Yes.

23 Q. Do you remember that?

1 A. I do.

2 Q. That earlier email, which was
3 Exhibit 41, page -- BSR Exhibit 41, page 51, was
4 from January 6, 2010, correct?

5 A. Yes.

6 Q. And is it your experience that board
7 members can learn and develop as time goes on?

8 A. Absolutely.

9 Q. And that part of what you try to do at
10 LGC is to integrate experiences and teach board
11 members, expand their knowledge so that they
12 become more effective and active?

13 A. That's correct. And Karen Liot Hill
14 was a very attentive member of the board.

15 Q. And did you consider her to be an
16 appropriate choice?

17 A. Yes.

18 Q. And do you find anything dereliction in
19 what she did in the past?

20 A. No.

21 Q. And, in fact, what you hope from your
22 board members is that they express all of their
23 frustrations and anger or concerns so that there

1 can be better management?

2 A. That's correct.

3 Q. Dialogue helps governance?

4 A. I agree.

5 Q. And full dialogue helps it better?

6 A. Yes.

7 Q. Let's talk about taking snippets of
8 conversations about competitiveness and
9 Mr. Andrews.

10 When you review these minutes that are
11 in these boxes here, maybe 200, are you going to
12 find the dialogue that you've talked about?

13 A. Yes.

14 Q. And, for example --

15 MR. GORDON: Could you just bring up
16 Exhibit 46? I'm not going to go through it all,
17 all these minutes, but I'm just going to bring up
18 one snippet.

19 THE PRESIDING OFFICER: And I
20 understand your reference to the number 200 was to
21 the number of minutes, not boxes, correct?

22 MR. GORDON: Correct.

23 BY MR. GORDON:

1 Q. And if you go to page 7 and go to the
2 bottom -- see if I've got the right one.

3 MR. GORDON: Okay, stop there.

4 BY MR. GORDON:

5 Q. Right there, I just picked out one
6 snippet, one snippet, and this is the hearing, the
7 all boards meeting, April 7, 2003. Keith Burke
8 emphasized, I think it is important to note that
9 this is not about Primex, this is about changing
10 the landscape.

11 We have to find ways to work together.
12 Primex keeps us sharp. The focus is on how we can
13 evolve as a total organization to make it stronger
14 and better for our members.

15 When you were talking about
16 competitiveness, and you were talking about
17 Primex, that's what your board was saying, it's
18 not them, it's how do we do better, is the
19 sentiment just expressed there by Mr. Keith Burke,
20 was that the sentiment of the board?

21 A. I believe so.

22 Q. Next subject, press. You heard that --
23 you were asked by Mr. Volinsky whether or not

1 someone's tweeting from the courtroom?

2 A. Yes.

3 Q. Do you know if attorneys for the BSR
4 have a Facebook page where every night they are
5 posting what's happening in the trial?

6 A. I've heard that.

7 Q. Do you know that it's Mr. Volinsky's
8 Facebook page?

9 A. I've heard that.

10 MR. VOLINSKY: Do we want to put it in
11 evidence? I'd agree to put it in evidence,
12 because --

13 THE PRESIDING OFFICER: Mr. Volinsky,
14 do you have an objection to the question?

15 MR. VOLINSKY: I do.

16 THE PRESIDING OFFICER: Okay, would you
17 please state your grounds?

18 MR. VOLINSKY: No, I'll withdraw it.
19 Go ahead.

20 THE PRESIDING OFFICER: Thank you.
21 Mr. Gordon, would you please proceed.

22 MR. GORDON: I'm going to go on to my
23 next question.

1 THE PRESIDING OFFICER: Thank you.

2 BY MR. GORDON:

3 Q. It has to do with, again, press, and
4 was the BSR issuing press releases.

5 A. Yes.

6 Q. And was there a public relations -- I
7 don't want to use this word battle -- but they
8 were issuing things and LGC was responding?

9 A. We were responding. Our members asked
10 that we respond.

11 Q. And why did your members ask that you
12 respond?

13 A. Because they were seeing one side of
14 the issue, and they were saying do you have an
15 answer to some of those issues.

16 Q. And do you think it would be good
17 practice for some side to be expressing publicly
18 their view and for you to remain silent and sit
19 back and do nothing?

20 A. No.

21 Q. Why not?

22 A. Because it's important that people
23 understand the full context of what is being

1 discussed in the public arena so that if people are
2 going to draw conclusion, they have basic facts
3 with which to draw those conclusions.

4 Q. And is that what you tried to do?

5 A. Yes.

6 Q. And that's what LGC tried to do?

7 A. Yes.

8 Q. So the playing field would be somewhat
9 level?

10 A. Yes.

11 Q. And then there was also legislative
12 hearings going on as well?

13 A. That's correct.

14 Q. And the legislators were asking
15 questions?

16 A. Yes, they were.

17 Q. And you were addressing their concerns
18 as well?

19 A. Yes.

20 Q. And you were trying to do the best you
21 could?

22 A. Yes.

23 Q. To give the most amount of

1 information --

2 A. Correct.

3 Q. -- in order to allow people to make
4 informed decisions?

5 A. That's correct.

6 Q. Whether it be your members, the
7 legislature, or even this hearing officer?

8 A. We think it's critical that people have
9 all of the information that they can have in order
10 to make an informed decision. It influenced the
11 legislature in 2010 because they did not have the
12 information prior to the time that the risk
13 pools -- and I don't mean just LGC -- but all the
14 risk pools provided information about the
15 consequences of decisions that they might make.
16 That's what's critical.

17 THE PRESIDING OFFICER: Thank you.

18 MR. GORDON: Thank you.

19 THE PRESIDING OFFICER: Mr. Saturley,
20 any questions?

21 MR. SATURLEY: No, thank you,
22 Mr. Mitchell.

23 THE PRESIDING OFFICER: And,

1 Mr. Howard, any questions?

2 MR. HOWARD: No, thank you.

3 THE PRESIDING OFFICER: Any recross,
4 Mr. Volinsky?

5 MR. VOLINSKY: Yes.

6 RE-CROSS-EXAMINATION

7 BY MR. VOLINSKY:

8 Q. In the interest of fair information,
9 Ms. Carroll, can you identify for us anywhere any
10 document where the Local Government Center or its
11 predecessors in writing described Mr. Andrews'
12 sentiment that one of the reasons for subsidizing
13 workers' comp. was because workers' comp. was
14 Primex's strongest program?

15 A. I don't know -- I don't know that I can
16 determine that in writing.

17 MR. VOLINSKY: Thank you.

18 THE PRESIDING OFFICER: No further
19 questions from counsel; bear with me. And, once
20 again, I do this at great risk, but I have a
21 couple of questions after some long testimony.

22 And you may have been here when I made
23 this comment yesterday. There is some advantage

1 to testifying later in the proceeding because you
2 get to hear everything that goes before you. The
3 disadvantage, to some extent, if you will, is that
4 I have some questions I need clarification on --

5 THE WITNESS: Okay.

6 THE PRESIDING OFFICER:

7 -- notwithstanding all of the testimony, and
8 perhaps because of all of the testimony.

9 THE WITNESS: Okay.

10 THE PRESIDING OFFICER: So please bear
11 with me.

12 THE WITNESS: Certainly.

13 THE PRESIDING OFFICER: This reference
14 to the BSR or its counsel having a Facebook page
15 and using it during these proceedings, have you
16 seen this Facebook page?

17 THE WITNESS: No. As I mentioned, I
18 have just heard it. No, I have not seen it.

19 THE PRESIDING OFFICER: I believe that
20 you testified that you were aware that there
21 were -- I didn't think I'd live so long to use the
22 word -- but there have been tweets going out
23 through the course of this proceeding?

1 THE WITNESS: Correct.

2 THE PRESIDING OFFICER: Correct? And
3 that those tweets are being generated by a LGC
4 staff person?

5 THE WITNESS: Correct.

6 THE PRESIDING OFFICER: At whose
7 direction are those tweets being sent out?

8 THE WITNESS: It was suggested for our
9 staff and our members to hear generally what was
10 going on, that that would be a good way to keep
11 people in touch. The tweets, I have seen those,
12 and primarily they just identify who is
13 testifying, what the subject matter may be,
14 whether it's direct or cross-examination. It's
15 really --

16 THE PRESIDING OFFICER: A running
17 commentary?

18 THE WITNESS: It's not a commentary.
19 It really is identifying -- for example, I would
20 presume the tweet this morning was that I was --

21 THE PRESIDING OFFICER: I don't need to
22 know the content it was. My question, please,
23 Mr. Carroll, is simply who. And I think you said

1 it was suggested --

2 THE WITNESS: We had -- we had a
3 discussion among staff about whether that would be
4 a good idea.

5 THE PRESIDING OFFICER: And who made
6 the call?

7 THE WITNESS: And I said that was fine,
8 as long as we weren't identifying the legal
9 matters and making any commentary on that, it was
10 just generally the proceedings in the -- in the
11 hearing.

12 THE PRESIDING OFFICER: Do you have
13 anyone assigned to review these before they go
14 out?

15 THE WITNESS: There are several members
16 of the leadership team who review them. And now
17 because they're going out --

18 THE PRESIDING OFFICER: I understand.
19 And I'm not asking if you, I just asked do you
20 have someone? And I take it your answer is yes.

21 THE WITNESS: Yes, but I want to make
22 sure you understand, not prior to the time that
23 they go out, because they are contemporaneous with

1 the activity.

2 THE PRESIDING OFFICER: Sure. Are they
3 reviewed on a daily basis by someone?

4 THE WITNESS: Yes.

5 THE PRESIDING OFFICER: The leadership
6 team?

7 THE WITNESS: Yes.

8 THE PRESIDING OFFICER: Or members of
9 the leadership team?

10 THE WITNESS: Yes.

11 THE PRESIDING OFFICER: Is any member
12 of that leadership team an attorney?

13 THE WITNESS: Yes.

14 THE PRESIDING OFFICER: A licensed
15 attorney?

16 THE WITNESS: Yes.

17 THE PRESIDING OFFICER: Could I have
18 their name, please.

19 THE WITNESS: There are three licensed
20 attorneys on the leadership team.

21 THE PRESIDING OFFICER: Reviewing these
22 tweets?

23 THE WITNESS: Well, they are going to

1 all members of the leadership team. The way we
2 operate as -- just so you understand, no one has
3 been assigned to say this is incorrect or this is
4 improper, we shouldn't be saying this. We all
5 weigh in.

6 THE PRESIDING OFFICER: Way ahead of
7 me, Ms. Carroll.

8 THE WITNESS: Okay, sorry.

9 THE PRESIDING OFFICER: Back to my
10 question.

11 THE WITNESS: Yes, sir.

12 THE PRESIDING OFFICER: Are any of them
13 attorneys, and I understand your response said
14 yes, there were three.

15 THE WITNESS: Yes. I am an attorney,
16 David Frydman is an attorney; Judy Silva is an
17 attorney.

18 THE PRESIDING OFFICER: And who reviews
19 them on a daily basis?

20 THE WITNESS: We all see them on a
21 daily basis.

22 THE PRESIDING OFFICER: Are you
23 familiar with the term -- well, there's many terms

1 of art, but -- if I asked you to preserve those
2 tweets --

3 THE WITNESS: Yes.

4 THE PRESIDING OFFICER: -- could you do
5 so?

6 THE WITNESS: Yes.

7 THE PRESIDING OFFICER: And could you
8 do so until I issued an order releasing those
9 tweets?

10 THE WITNESS: Certainly.

11 THE PRESIDING OFFICER: To destruction
12 or removal or whatever?

13 THE WITNESS: Yes.

14 THE PRESIDING OFFICER: I'm also going
15 to ask -- well, let me ask this. Are you familiar
16 with -- do you have a Facebook doing the same kind
17 of communication?

18 THE WITNESS: I don't believe so.

19 THE PRESIDING OFFICER: Okay. If you
20 should find out that there is a similar type of
21 communication in which there's attorney
22 involvement and review --

23 THE WITNESS: Yes.

1 THE PRESIDING OFFICER: -- would you
2 put that under a protective maintenance --

3 THE WITNESS: Certainly.

4 THE PRESIDING OFFICER: -- status as
5 well?

6 THE WITNESS: Certainly.

7 THE PRESIDING OFFICER: Thank you very
8 much.

9 I have heard an utterance from the BSR
10 table with respect to there being a Facebook and
11 also a -- also commun -- regular communication
12 about these proceedings.

13 Mr. Volinsky, would you like to
14 respond? I understand you are not under oath, but
15 you are a licensed attorney.

16 MR. VOLINSKY: Sure.

17 THE PRESIDING OFFICER: Does such a
18 Facebook exist, Facebook page exist?

19 MR. VOLINSKY: No. I have a personal
20 Facebook account.

21 THE PRESIDING OFFICER: Yes.

22 MR. VOLINSKY: With privacy settings
23 that allow my friends to see my page, but not the

1 general public to see my page. And I do, from
2 time to time, write that I'm in trial, and so and
3 so is a witness today, or here is a link to a
4 relevant story. And if I can figure out how to
5 print it, I'm glad to provide it to you.

6 THE PRESIDING OFFICER: Understood. I
7 don't want -- one, would you also honor my
8 request --

9 MR. VOLINSKY: Sure.

10 THE PRESIDING OFFICER: -- to preserve
11 any communications on your Facebook that relate to
12 these proceedings?

13 MR. VOLINSKY: Sure.

14 THE PRESIDING OFFICER: Since the
15 beginning of these proceedings?

16 MR. VOLINSKY: Yes.

17 THE PRESIDING OFFICER: Thank you very
18 much. You accept that, Mr. Saturley? You accept
19 his representation that he'll do so?

20 MR. SATURLEY: Certainly I do.

21 THE PRESIDING OFFICER: And Mr. Gordon,
22 the same?

23 MR. GORDON: Absolutely.

1 THE PRESIDING OFFICER: And,
2 Mr. Howard?

3 MR. HOWARD: Yes.

4 THE PRESIDING OFFICER: Can this case
5 have any other different angles? Cyber board, is
6 this how that begins?

7 Thank you for being patient with that.
8 It is a series of novel inquiries, but please know
9 I have not been faced with that before.

10 THE WITNESS: Okay.

11 THE PRESIDING OFFICER: When you were
12 legal counsel to -- I guess NHMA first --

13 THE WITNESS: Yes.

14 THE PRESIDING OFFICER: -- and then it
15 progressed to the LGC, I have a notation, and I
16 want to make sure it's accurate, that you attended
17 meetings of the New Hampshire Municipal
18 Association, NHMA, and that you started -- when
19 the LGC was formed you started to attend those
20 committee meetings as well?

21 THE WITNESS: That's correct.

22 THE PRESIDING OFFICER: And at the time
23 that you were in a legal counsel position, if

1 you'll accept that characterization, did you also
2 attend the meetings of the HealthTrust, the PLC
3 and the Worker's Comp. Trust?

4 THE WITNESS: No, I've never attended
5 the independent board meetings.

6 THE PRESIDING OFFICER: Excellent.
7 Thank you. When the -- following the
8 reorganization as your responsibilities grew, did
9 you attend the -- if I could call it the parent
10 board -- the LGC board of directors' meetings?

11 THE WITNESS: Yes, when I was able to.

12 THE PRESIDING OFFICER: Understood.
13 And that continued when you stepped into the
14 directorship, interim?

15 THE WITNESS: Absolutely.

16 THE PRESIDING OFFICER: Ms. Carroll, as
17 you know, I have read minutes from your
18 organization.

19 THE WITNESS: Yes.

20 THE PRESIDING OFFICER: And were you
21 here for Mr. Andrews' testimony that, at least in
22 his mind, he had a particular individual to thank
23 for keeping such accurate minutes, do you recall

1 that testimony?

2 THE WITNESS: Yes, I do.

3 THE PRESIDING OFFICER: What is that
4 person's name?

5 THE WITNESS: Carolyn Hoeker.

6 THE PRESIDING OFFICER: Hoeker, could
7 you spell that?

8 THE WITNESS: H-O-E-K-E-R.

9 THE PRESIDING OFFICER: And by what
10 means did she record those minutes -- those
11 hearings -- those meetings.

12 THE WITNESS: She took handwritten
13 notes. She took shorthand.

14 THE PRESIDING OFFICER: She took
15 shorthand?

16 THE WITNESS: Yes.

17 THE PRESIDING OFFICER: That's
18 wonderful. Just to close that loop. And then you
19 heard Mr. Andrews describe a process by which they
20 would be circulated among, if you will, the staff
21 that were present, and there was an opportunity if
22 you thought that there was disagreement, and then
23 they would be presented to the board at the next

1 meeting for the normal type of motion or
2 resolution for them to be accepted, do you recall
3 that?

4 THE WITNESS: I do recall that. It was
5 a limited group of folks who reviewed it prior to
6 the time it was given back to the board.

7 THE PRESIDING OFFICER: These
8 proceedings involve very much, as you can
9 appreciate, the operation of LGC.

10 THE WITNESS: Yes.

11 THE PRESIDING OFFICER: And there's
12 been accusations, and I'm interested, obviously,
13 in being very accurate in my understanding as I
14 confront all of this evidence at its conclusion.

15 That having been said, how are the LGC
16 board members elected to the LGC board?

17 THE WITNESS: Yes. It ultimately ends
18 with a member meeting at our annual conference,
19 but the members get on a nominating committee list
20 either by volunteering to -- to be on the board,
21 by other local officials volunteering a colleague,
22 or staff who sees that there are local officials
23 who are particularly interested in the

1 organization.

2 And then the nominating committee
3 presents a slate, the slate is voted on, but there
4 are some times when there are votes -- nominations
5 from the floor.

6 THE PRESIDING OFFICER: Would it be --
7 if I characterize my understanding as when it
8 reaches the board as a slate, that board consensus
9 is sought as opposed to a vote, as such.

10 A. Well, the board doesn't really make a
11 decision about the slate. The slate is adopted by
12 the nominating committee, and then it is -- the
13 board reviews it, but it's presented to -- to the
14 membership generally.

15 I don't know that I've ever
16 experienced -- well, I mean, the membership
17 generally at the annual meeting. The slate gets
18 voted on by the membership.

19 THE PRESIDING OFFICER: Thank you.

20 THE WITNESS: So I don't know that I've
21 ever seen when the nominating committee report is
22 provided to the board, a board member suggesting
23 that names be eliminated from the slate.

1 THE PRESIDING OFFICER: And when you
2 say the entire membership, that's the entire
3 membership of LGC?

4 THE WITNESS: Correct.

5 THE PRESIDING OFFICER: And because
6 there's so many different entities, and we've been
7 presented with NHMA as having, at least I
8 understood this, MAC board --

9 THE WITNESS: That's correct.

10 THE PRESIDING OFFICER: -- as
11 different.

12 THE WITNESS: Yes.

13 THE PRESIDING OFFICER: Can you help me
14 with the composition? When you say LGC members,
15 who gets to vote?

16 THE WITNESS: It's traditionally
17 those -- those municipalities, school districts
18 and counties that are a part of the risk pool
19 operations.

20 THE PRESIDING OFFICER: So if a member
21 of NHMA, if I don't purchase any of these
22 products, I don't vote on the LGC board?

23 THE WITNESS: That's correct, you vote

1 on the NHMA MAC.

2 THE PRESIDING OFFICER: Thank you.
3 Ms. Carroll, when you took the position as --
4 well, I suppose it's somewhat to be determined,
5 the evidence isn't closed yet. When you became --
6 when you took the position of legal counsel, or a
7 legal counsel position --

8 THE WITNESS: Yes.

9 THE PRESIDING OFFICER: -- were you a
10 licensed New Hampshire attorney?

11 THE WITNESS: Yes.

12 THE PRESIDING OFFICER: And have you
13 continued to be a licensed New Hampshire attorney?

14 THE WITNESS: Yes.

15 THE PRESIDING OFFICER: And you
16 continue as you sit here today?

17 THE WITNESS: I am. I am licensed in
18 both New Hampshire and Maine.

19 THE PRESIDING OFFICER: Thank you very
20 much. I hope I haven't stirred anything up, but I
21 had to close some holes.

22 Anything further, gentlemen? There
23 being nothing, take three to five to exchange --

1 well, we'll see where we're going.

2 Thank you very much, Ms. Carroll --

3 THE WITNESS: Thank you.

4 THE PRESIDING OFFICER: -- for your
5 testimony.

6 THE WITNESS: You're welcome.

7 THE PRESIDING OFFICER: I found it
8 helpful.

9 THE WITNESS: Thank you.

10 (Recess taken.)

11 THE PRESIDING OFFICER: We have
12 returned from the afternoon recess. My
13 understanding is that we continue on the cases in
14 chief that have been, if you will, integrated on
15 behalf of LGC, its entities, Ms. Maura Carroll and
16 Mr. Barry Curro.

17 And, Mr. Howard, you have a witness to
18 present to us, correct?

19 MR. HOWARD: Yes, Mr. Mitchell, we'll
20 be presenting Attorney Richard Samuels.

21 THE PRESIDING OFFICER: Thank you, very
22 much. Mr. Samuels, would you please raise your
23 right hand, please?

1 (RICHARD SAMUELS, sworn.)

2 THE PRESIDING OFFICER: Provide us with
3 your business address.

4 THE WITNESS: My business address is
5 900 Elm Street, Manchester, New Hampshire.

6 DIRECT EXAMINATION

7 BY MR. HOWARD:

8 Q. And if you wouldn't mind stating your
9 name for the record, too, please.

10 A. My name is Richard Samuels.

11 Q. Good afternoon, Attorney Samuels, and
12 thank you for your patience today. The first
13 thing I'd like to do is to go over your
14 qualifications. How long have you been a member
15 of the New Hampshire Bar practicing law here in
16 the state?

17 A. I have been a member of the
18 New Hampshire Bar for nearly 32 years, since the
19 fall of 1980.

20 Q. And can you briefly describe for us
21 your employment history in the field of law here
22 in New Hampshire?

23 A. Yes, it's very simple. Out of law

1 school I went to work for the McLane Law Firm in
2 Manchester, and I've been there since.

3 Q. And what is your position at the McLane
4 Law Firm?

5 A. I'm a director of the law firm.

6 Q. And before we get into your practice
7 area, could you briefly describe for Mr. Mitchell
8 your educational background, beginning with your
9 college degree?

10 A. Right. I have a bachelor's degree from
11 Union College in Schenectady. Next was a master's
12 degree in English from Duke University, and then my
13 law degree from Cornell Law School.

14 Q. Now, returning to your practice at the
15 McLane Law Firm, what are your primary areas of
16 practice?

17 A. My primary areas of practice are
18 corporate law generally; transactional work,
19 mergers and acquisitions; and securities
20 regulation.

21 Q. In the area of securities regulation,
22 have you dealt both with the Securities and
23 Exchange Commission and the State Bureau of

1 Securities Regulation?

2 A. Yes, I've had the good fortune of
3 representing public companies, mostly earlier in my
4 career doing registered offerings with the SEC, and
5 then a lot of private offerings and broker/dealer
6 and investment advisor registration with the Bureau
7 of Securities Regulation.

8 Q. And would you consider securities
9 regulation, securities law to be a significant
10 portion of your practice?

11 A. It's a significant portion of my
12 practice, yes.

13 Q. And if you could tell us, too, just to
14 give us a bit of a sense of what else you do in
15 addition to your practice of law, do you serve on
16 any boards, whether they be charitable
17 organizations or other entities, and have you in
18 the past?

19 A. Yes, it's many. As New Hampshire
20 lawyers do, I served on a number of not-for-profit
21 boards of a variety of organizations, the
22 New Hampshire YMCA, the Manchester Institute of
23 Art, the Manchester Community Health Center, and

1 others. I've been chairman of the board of most of
2 those organizations at one point or another.

3 In the business arena I am on the board
4 of the Business and Industries Association, and I
5 was chairman recently of the board.

6 Q. Thank you. I want to direct your
7 attention to August of 2011, just this past
8 summer. Were you approached at some point by
9 the -- by LGC to review a corporate matter for
10 them?

11 A. Yes. David Frydman called me in August
12 of last year and asked me to provide some
13 assistance and advice with respect to corporate
14 matters that stemmed from Mr. Wingate's
15 investigational report, I guess.

16 Q. And what did you understand the nature
17 of the issue to be that you were going to be
18 addressing in August of 2011?

19 A. The primary question in August of 2011
20 had to do with the allegations or statements in
21 Mr. Wingate's report with respect to the corporate
22 organization and the -- I think it was 2003 mergers
23 or attempted mergers among the subsidiaries of LGC.

1 Q. And did you undertake to review what
2 the existing structure was at the time you looked
3 at it?

4 A. I needed to know what the existing
5 structure of LGC was in order to figure out how
6 they got there, yeah.

7 Q. And could you describe for Mr. Mitchell
8 what the structure was, as you understand it, and
9 how they got there?

10 A. Yeah. Well, first I focused primary on
11 the RSA 5-B pools and the entities in which those
12 pools were housed, not on subsidiary organizations,
13 that really had nothing to do with 5-B, because
14 that wasn't my task.

15 And what I determined in short, but I
16 can explain at greater length, is that the series
17 of mergers or attempted mergers that were intending
18 to be effective in 2003 were, as Mr. Wingate
19 reported, not effective at that time.

20 Nonetheless, there were two LLC's which
21 were referred to as HealthTrust and PLT that were
22 operating as 5-B pools.

23 Q. As they were operating as 5-B pools

1 when you looked at this in August of 2011, were
2 they lawful entities?

3 A. Yes, they were duly formed
4 New Hampshire limited liability companies that were
5 in good standing with the Secretary of State.

6 Q. And so if I can ask the question this
7 way, what was the problem, and what did you do to
8 fix it?

9 A. Well, calling it a problem may be
10 overstating.

11 Q. What was the issue, and what did you do
12 to address it? How's that?

13 A. What had occurred is that -- as I think
14 there's been testimony in this proceeding
15 previously, there was an attempt to merge a -- two
16 New Hampshire not-for-profit corporations formed
17 under RSA 292 into two respective Delaware limited
18 liability companies.

19 A filing was made in one state, I think
20 it was Delaware, and not in New Hampshire, and
21 there were two problems with that. One is you
22 cannot merge an RSA 292 corporation into an LLC,
23 whether it's a Delaware LLC or a New Hampshire LLC.

1 And, secondly, if you're going to merge
2 entities that can be merged, and those entities are
3 formed in two different states, it's always the
4 case that you have to make filings with the
5 Secretary of State of both states in order to have
6 that merger become effective. So it -- in other
7 words, there was an impossibility, and a flaw in
8 the procedure.

9 Q. But you did say that the LLCs as they
10 existed in New Hampshire were lawful entities.
11 What did you have to do to address this issue that
12 you've identified?

13 A. My view was that you really didn't have
14 to do anything to address the issue that I
15 identified. I think that the result -- and in
16 August of 2011, the result of the merger having not
17 occurred, as it couldn't occur, was that the
18 assets, that would have been the assets of the RSA
19 292 corporation, never went anywhere. They never
20 went -- they never became the assets of a surviving
21 Delaware entity.

22 That being the case, the 292
23 corporations might be thought to still have title

1 to those assets. The problem was, having failed to
2 file the -- the reports that have to be filed by
3 not-for-profit corporations every five years with
4 the Secretary of State, those RSA 292 corporations
5 were administratively dissolved the next year,
6 which was 2006.

7 Therefore, my recommendation to clear
8 up any issue with respect to the right to own and
9 use those assets, and to just get the issue out of
10 way -- out of the way, because it was an issue that
11 was identified by Mr. Wingate, was revive those
12 organizations.

13 Luckily RSA 292 provides that a
14 dissolved, not-for-profit corporation can be
15 revived at any time using a certain procedure that
16 I helped guide the LGC through.

17 And once revived, those formerly
18 dissolved corporations are treated as if they had
19 never been dissolved, and that they had a -- were
20 vested in all of the assets, and all of the
21 obligations in which they were vested on the date
22 that they -- that the charter was revoked, or as I
23 say, that they were dissolved.

1 Q. And did you set about then to revive
2 what used to be the 292 nonprofit corporations?

3 A. Yes. So we made filings in the
4 Secretary of State's office, after following the
5 appropriate procedure that's laid out in the
6 statute, on I believe it was August 31st, 2011, to
7 revive those corporations.

8 Those filings were accepted by the
9 Secretary of State, and from that moment backwards,
10 back to 2006 when the charters were revoked,
11 they're treated as if those corporations had
12 existed all the time and the charters had never
13 been revoked.

14 Q. And once the 292s were revised, what's
15 the next step in the process?

16 A. It turns out that what had occurred in
17 2003 -- correct me if I have that year wrong -- was
18 that LGC, believing that the merger had occurred
19 and that the assets -- or actually that two mergers
20 had occurred, and the assets had ended up in the
21 surviving New Hampshire LLC, respectively -- that
22 is HealthTrust, LLC, PLT, LLC -- they have
23 effectively transferred the assets that had

1 belonged to the 292 corporations to the LLCs, what
2 you might call the pool assets. And they did that
3 by actually changing the names on accounts and
4 changing the employer ID numbers on the accounts.

5 In other words, there was a transfer of
6 assets that was done. So once we had revived
7 corporations, it seemed to us that the best thing
8 to do was document what had actually happened, that
9 there was a -- a transfer of assets from these
10 corporations to these two LLCs, and the pools were
11 continued, essentially, by the LLCs from July 2003
12 to the present day.

13 Q. And were the appropriate operating
14 agreements and resolutions created so that the
15 292s would go back, give its assets over to the
16 LLCs on paper to make sure that the paper trail
17 was clean, so to speak?

18 A. Yeah, I believe so. But the operating
19 agreements, which are sometimes referred to as the
20 LLC agreements, were really put in place, again, to
21 document what had happened. No one could find --
22 no one at LGC could find operating agreements for
23 these single member LLCs, and certainly best

1 practice for any LLC and the practice that we
2 always use, even for single LLCs, is to have
3 written operating agreements.

4 That seemed particularly important in
5 this instance in part because of RSA 5-B, and the
6 need to make it clear that the LLCs were governed
7 by bylaws and governed by a board of directors, so
8 we created limited liability company agreements
9 that made that clear.

10 I didn't feel there was any sleight of
11 hand in doing that because it seemed that it was
12 really documenting what had been going on at this
13 point for roughly eight years.

14 Q. And I'm not going to ask you to go into
15 any more detail about how this process unfolded,
16 and I believe it's Exhibit 39 in the BSR's
17 exhibits that's already a full exhibit, the
18 revival documentation is in there.

19 What I wanted to ask you is, you
20 already said that the existing structure as you
21 looked at in August 2011 was a lawful structure,
22 that the LLCs were lawful entities. Were they
23 lawful entities operating lawfully from 2003 to

1 2011?

2 A. Yes. So far as I could tell, yes.

3 Q. You didn't have any reason to think
4 that they weren't?

5 A. No.

6 Q. Now, you were later -- this is moving
7 on in time -- were you not retained by LGC to
8 serve as an expert in this case?

9 A. Correct. Everything that I've just
10 described was in my role as an attorney retained by
11 LGC, and it was only later that I was asked whether
12 I would provide an expert opinion in this case.

13 Q. And I'm going to ask you about the two
14 expert opinions here today. The first is whether
15 in your opinion the existing structure of LLC with
16 its parent/subsidiary model of the single member
17 LLCs is compliant with RSA 5-B, and then I'm also
18 going to get into securities after we finish that
19 discussion.

20 So the first thing I would ask you is
21 are you familiar with RSA 5-B?

22 A. I've read RSA 5-B a number of times.

23 Q. And you are familiar with the existing

1 LGC structure?

2 A. Yes, but in particular with respect to
3 HealthTrust and PLT.

4 Q. Right, and I'm asking you to focus your
5 attention and the basis of your opinion is on the
6 HealthTrust and Property Liability Trust, workers'
7 comp. LLCs, okay? Do you have an opinion whether
8 the existing structure complies with RSA 5-B?

9 A. I do think that the existing structure
10 complies with RSA 5-B.

11 Q. Okay, I don't have to ask you what your
12 opinion is, then. Can you explain for the hearing
13 officer the basis of your opinion that it is
14 compliant with RSA 5-B?

15 A. Yes. With respect to entity
16 structure -- I can refer to loosely as corporate
17 structure, although these are LLCs -- RSA 5-B
18 doesn't impose that many requirements. Essentially
19 the requirements are that it be an entity formed in
20 New Hampshire -- and excuse me, because I'm going
21 to refer to the statute.

22 Q. And you have before you joint
23 Exhibit 1, which is RSA 5-B.

1 A. Yes, and I'm looking at 5-B section 5.
2 Again, exists as a legal entity organized under
3 New Hampshire law, be governed by a board, the
4 majority of which is composed of elected or
5 appointed officials, officers or employees -- and
6 then I'm skipping down -- to be governed by written
7 bylaws which shall detail the term of eligibility,
8 et cetera.

9 In essence, those are the corporate
10 structure requirements.

11 Q. Does RSA 5-B require HealthTrust, LLC
12 and Property Liability Trust, LLC as separate
13 legal entities to have their own board of
14 directors, separate and distinct from the LGC,
15 Inc., board of directors?

16 A. I don't believe so.

17 Q. And does 5-B require those two separate
18 entities to have their two halves, separate and
19 distinct bylaws apart from the bylaws that are of
20 LGC, Inc.?

21 A. No, it requires that they be governed
22 by written bylaws, it does not say that they have
23 to have their own bylaws that govern it.

1 Q. You prepared an expert report in this
2 case, correct?

3 A. Yes.

4 Q. And in that report you describe the
5 bureau's theory of how RSA 5-B requires distinct
6 entities to have their own bylaws and own board of
7 directors. Can you describe -- or rather give
8 your opinion about their distinct to the entity
9 theory?

10 A. It's really just the way of phrasing
11 what I just said, and perhaps I phrased it better
12 when I was able to write it at leisure, and that is
13 I think that having read the amended petition, it
14 strikes me that the bureau has read into the
15 corporate structure requirements of RSA 5-B a
16 requirement that each pool, entity, have its own
17 distinct bylaws and its own distinct board of
18 directors, which is not what the statute says.

19 Q. And I'd just ask you to think about for
20 the moment, we described the LLCs as single member
21 LLCs. You are aware, are you not, that LGC, Inc.,
22 is the single member of each LLC?

23 A. Yes.

1 Q. My intention is to move on to your
2 opinion on securities, so why don't we address our
3 attention to that.

4 You already talked about your
5 significant experience in securities law. When
6 you were asked to review this case, can you
7 summarize for Mr. Mitchell the documentation that
8 you recall reviewing.

9 A. I reviewed quite a bit of
10 documentation, and I'm sure that I will be missing
11 something when I try to rattle off what it is. But
12 I reviewed board meeting minutes, I reviewed all of
13 the entity formation organization documents. I --
14 in order to form my opinion I reviewed case law,
15 SEC no-action letters, commentary on securities
16 law, statutes, of course, and regulations.

17 I reviewed the contracts, which is the
18 patient agreement and the member agreement -- I'm
19 not sure I'm getting the names right -- that are
20 entered into by participating towns and school
21 districts, and bylaws and articles of LGC.

22 Q. You mentioned a moment ago that you
23 reviewed the participation agreement that a member

1 who wants to become a part of the pool must
2 execute. I want to ask you if you have developed
3 an opinion whether the contracts, by means of
4 which the municipalities or schools or counties
5 participate in the pooled risk management programs
6 are securities, do you have an opinion about that?

7 A. I do have an opinion.

8 Q. See, now you're going to give me a
9 chance to ask the question. And can you express
10 for Mr. Mitchell what your opinion is in that
11 respect?

12 A. My opinion is that the contracts are
13 not securities.

14 THE PRESIDING OFFICER: Excuse me, just
15 for clarification. Mr. Samuels, the contracts,
16 when you were going down the list of things you
17 reviewed, you made a references to participation
18 agreements and member agreements, contracts.
19 Which one are you referring to?

20 THE WITNESS: Yeah. In particular I
21 think it's the agreement entitled participation
22 agreement.

23 THE PRESIDING OFFICER: Thank you.

1 MR. HOWARD: And, Mr. Mitchell, I
2 direct your attention to what I believe is already
3 a full exhibit, it's Exhibit 261, LGC 261. Which
4 we may look at just briefly in a moment.

5 THE PRESIDING OFFICER: Very good.

6 BY MR. HOWARD:

7 Q. Well, Mr. Samuels, you're familiar with
8 the securities laws in New Hampshire. Is risk
9 pool membership contracts on the express list of
10 securities under 421-B?

11 A. No, it certainly isn't on what we refer
12 to as the laundry list of securities. And in other
13 words to characterize it as a security, it would
14 have to fit within the meaning of investment
15 contract.

16 Q. So investment contract is one of those
17 things that's on the laundry list; this has to be
18 an investment contract in order to be a security,
19 correct?

20 A. I believe so.

21 Q. Could you describe for us, then, your
22 understanding of the state of the law in
23 New Hampshire as to how under New Hampshire law we

1 determine if something is an investment contract.

2 A. Yes. So far as I am aware, the only
3 analysis that's applied in New Hampshire to
4 determine whether an agreement or an arrangement is
5 an investment contract is the analysis that was
6 developed under the federal securities laws, and
7 that is -- begins with SEC V Howey and the cases
8 that follow from it.

9 Q. And have you in your experience seen
10 any context in which the Bureau of Securities
11 Regulation has applied the Howey test?

12 A. There are very few documents that you
13 can look at where the Howey test is applied to the
14 current version of RSA 421-B, which is the
15 New Hampshire Uniformed Securities Act.

16 But there is a policy statement, I
17 believe, of the bureau in which -- from a few years
18 ago in which SEC/Howey is referred to as the
19 appropriate analysis, and SEC V Howey is also cited
20 in a fairly recent analysis of -- that was done by
21 the bureau by Professor Long entitled something
22 like When are Notes Securities.

23 Q. And what is the state of our precedent

1 from the State Supreme Court with respect to
2 Howey?

3 A. There's very little New Hampshire
4 precedent from our Supreme Court, and also the
5 Federal District Court of New Hampshire, and then
6 one case in Maine from the Federal District Court
7 in Maine applying New Hampshire law.

8 And it's clear to me that SEC V Howey
9 would have been applied in a -- a New Hampshire
10 case that predated the January 1, 1982 effective
11 date of the current version of RSA 421-B, when the
12 investment contract was in the statute but it said
13 investment contract in the form of a bill of sale.

14 And the holding in the case, this is a
15 New Hampshire Supreme Court case, really rested on
16 the fact that this wasn't in the form of a bill of
17 sale, unless SEC V Howey was cited as the law to
18 investment contract analysis.

19 It was then referred to again in a --
20 maybe two US District Court for the District of
21 New Hampshire cases, and one Maine case, as I
22 noted, but none of those squarely state that under
23 New Hampshire law Howey is the test.

1 Q. And those cases are cited in your
2 expert report?

3 A. They are all cited in my expert report,
4 yes.

5 Q. If you could summarize for Mr. Mitchell
6 the -- essentially the four elements of the Howey
7 test?

8 A. And the Howey test is an investment in
9 a common enterprise with the expectation of profits
10 solely from the efforts of others. The word solely
11 is in Howey, and there's been some debate and
12 difference of opinion in court decisions, but not
13 in New Hampshire, as to whether solely is really a
14 part of the test, or whether it should be primarily
15 or predominantly or some other adjective.

16 Q. And we'll discuss that element in more
17 detail in just a moment. I have put up on the
18 screen -- I don't know how capable you are at
19 seeing it from your vantage point -- trust me, I'd
20 hidden the other three, but the four elements are
21 written out here.

22 First, about the nature of this test,
23 we've parsed it out into four separate elements.

1 Is this the kind of test where you have to satisfy
2 all four pieces in order for it to be considered a
3 security, or is one enough or is two enough?

4 A. No, you have to satisfy all four --
5 pieces as you say.

6 Q. I speak in simple terms. I want to
7 direct your attention first to No. 2, and that's
8 the common enterprise. Can we agree that this
9 risk pool management program and the members that
10 participate in it are engaged in a common
11 enterprise?

12 A. I think there's little doubt when
13 people pool their money -- and that's actually the
14 term that's used -- it's a common enterprise.

15 Q. So we can say that No. 2 is satisfied,
16 can we not?

17 A. Yes.

18 Q. I direct your attention now to element
19 No. 1, the investment of money. Can you describe
20 for Mr. Mitchell what the case law means, what
21 the law means when it says requires an investment
22 of money?

23 A. Investment of money refers to

1 investment intent. And I'll note right off the bat
2 that it becomes a little bit difficult in some
3 instances with respect to some arrangements or
4 contracts when you're doing this analysis to
5 distinguish between investment of money and the
6 third element, which we'll get to, they tend to get
7 conflated.

8 Q. That's the expectation of profits?

9 A. Expectation of profits. But my view on
10 the investment of money aspect as it relates to
11 this case is that I've seen no evidence of any sort
12 that there was an investment intent, or there is an
13 investment intent, nor do I think that it would be
14 reasonable for a town to have an investment intent
15 with respect to participation in these
16 participation agreements, which we'll call pool
17 contracts.

18 Q. What is your understanding of what a
19 participating member, municipality, what have you,
20 is doing when it writes a check over to LGC?

21 A. From the contracts themselves, which
22 are alleged to be the securities, I believe that
23 you can only conclude that a contributor, which is

1 what they're called, a participant, believes that
2 they're buying insurance, or an insurance-like
3 product, not that they're making an investment.

4 That's consistent with SEC analysis of
5 similar pool or cooperative or mutual insurance
6 cases in SEC no-action letters that deal with
7 insurance -- insurance products themselves, not 5-B
8 pools, not pools that are quite like 5-B pools,
9 that is governmental pools.

10 Q. So would you conclude, then, based on
11 your understanding of what a municipality is doing
12 when it purchases this service or product, this
13 insurance-type product, that it's not investing in
14 its money, but it's merely buying a way or paying
15 into a way of managing its own risk?

16 A. I believe that from the documents that
17 I reviewed, I would conclude that towns, school
18 districts, the participants, are -- or should
19 believe that they are purchasing insurance that
20 they hope will cost them less on a net basis if
21 they get back -- in some manner get back or benefit
22 from excess earning or surplus.

23 Q. So would you conclude then that based

1 on your understanding that the investment of money
2 element of Howey is not satisfied?

3 A. That is correct.

4 Q. Move then to the element of expectation
5 of profit. You said that sometimes gets conflated
6 with the first element. Can you describe or
7 explain to Mr. Mitchell what is meant by
8 expectation of profit?

9 A. Well, expectation of profit is a bit
10 easier to explain because it is what it says. Does
11 the purchaser -- and I think it means does a
12 reasonable purchaser -- believe or expect a profit,
13 to earn a profit from the investment of money in
14 this common enterprise.

15 And while there is some debate as to
16 whether the expectation of profit has to be the
17 sole reason for investing, or a predominant reason,
18 or a substantial reason, there is really, I think,
19 little doubt emerging from case law or commentary
20 that if the expectation of profit is very small,
21 then it isn't a security -- or, actually, I should
22 say it doesn't satisfy this element of the Howey
23 test.

1 Q. Have you had an opportunity to review
2 some of the writings of the current head of the
3 Bureau of Securities Regulation, Professor Long?

4 A. Yes. I'm not sure Professor Long is
5 the current head of the bureau; that's neither here
6 nor there.

7 Q. Okay.

8 A. But Professor Long is a well-known
9 author and expert on Blue Sky Law, which is state
10 securities law. He has a treatise that is
11 published that's called Blue Sky Law -- it's pretty
12 easy -- and he goes into great lengths to discuss
13 about expectation of profit, and exactly what the
14 test is and what it should be.

15 And it's clear from his writings that
16 if the expectation of profit is very much
17 outweighed by other motives, for instance in this
18 case the motive to buy insurance at a lower cost,
19 then you don't satisfy this element of the test,
20 and it doesn't fall into that debatable middle
21 ground.

22 Q. I want to ask you, your review of the
23 participation agreement, if that contract, in your

1 mind, gives rise to any inference that what a
2 member is doing when it signs it and writes a
3 check expects a profit from -- from its payment.

4 A. I don't think there's anything in the
5 agreements that should suggest or would suggest to
6 a participant that they are going to profit from
7 their participation.

8 Q. You recall from your review of the
9 participation agreement that there is language in
10 the participation agreement that ties in the
11 bylaws of LGC?

12 A. Yes, there is at least one reference in
13 the agreement to the bylaws of LGC.

14 Q. And I'm just going to ask you to assume
15 for the moment, without having to resolve this
16 issue, but assume for the moment that the tie in
17 to the bylaws incorporate sections 5.1 and 5.2 of
18 the bylaws.

19 Is there anything about sections 5.1
20 and 5.2 that creates an expectation of profit?
21 And I suppose we ought to start with informing
22 Mr. Mitchell what 5.1 and 5.2 are all about in the
23 bylaws.

1 A. Yeah, 5.1 and 5.2 address when and the
2 manner in which participants in pools -- in the
3 pools -- will, I'll call it, participate in the
4 earnings and profits or excess surplus. And I'm
5 not recalling precisely the words used, and I
6 should probably have those sections in front of me.

7 Q. There are two black binders there.
8 This would be LGC Exhibit 222.

9 MR. HOWARD: Actually, if you wouldn't
10 mind -- I'm sorry? I want to say it's page 13.

11 THE PRESIDING OFFICER: While
12 Mr. Howard is looking for the exhibit, if I could,
13 Mr. Samuels, you made reference to Professor
14 Long's treatise. Is that the title, Blue Sky?

15 THE WITNESS: I'm pretty certain the
16 title is Blue Sky Law. I think it's published by
17 Bloomfield, it's a big blue book, and it's updated
18 very frequently.

19 THE PRESIDING OFFICER: That was a good
20 question. So it has been updated?

21 THE WITNESS: Yes, if not annually,
22 almost.

23 MR. HOWARD: Mr. Mitchell, what's up on

1 the screen is page 13 of LGC Exhibit 222. I
2 understand the witness has that exhibit in front
3 of him.

4 BY MR. HOWARD:

5 Q. Mr. Samuels, do you have it?

6 A. I'm having a hard time.

7 Q. Here you go. Here's Exhibit 222, and
8 you can go right to the blue sticker.

9 THE PRESIDING OFFICER: Thank you,
10 Mr. Howard.

11 BY MR. HOWARD:

12 Q. You see at 5.1 it's entitled net income
13 to accrue to members. Have you reviewed that
14 provision in preparation of your opinion and
15 testimony here today?

16 A. Yes, I did, and I have.

17 Q. And section 5.2 is immediately below
18 it. In your view do those sections need to be
19 read together to understand how the net income to
20 accrue to members is first determined and then
21 what happens with it?

22 A. Yes. My belief is that it's very
23 important to read 5.1 in its entirety and 5.2 in

1 its entirety, and to read them together as a whole
2 rather than pick out particular words.

3 I'll give you an example. If you just
4 pick out one phrase, return of net income, if
5 you're only looking at that in isolation to its
6 context one might say, well, gee, if there's a
7 return, it sounds like a return on an investment,
8 doesn't it?

9 But when you read this in its entirety,
10 what it does, I believe, is it comports with the
11 requirement 5-B -- RSA 5-B -- that the earnings and
12 surplus be returned -- or excess earnings and the
13 surplus be returned to the members, and this
14 describes the manner, or manners, actually, in
15 which that can occur.

16 And in particular, 5.2 also describes
17 the fact that the return or benefit of the excess
18 won't necessarily go to everybody in the same
19 manner, but should go to -- to identically situated
20 members in the same manner.

21 Q. So is it fair to say, then, that based
22 on your review of 5.1 and 5.2, those provisions in
23 the bylaws as tied in to the participation

1 agreements do not create an expectation of profit?

2 A. If I could phrase it this way, I think
3 that it would be unreasonable for a participant to
4 expect profit based on reading 5.1 and 5.2 along
5 with the participation agreement.

6 Q. And while we're on this subject, I'm
7 going to have you just divert your attention over
8 to RSA 5-B:5, and that provision under 1(c) talks
9 about return of earnings and surplus. Does the
10 statute require that return to occur in a
11 particular manner?

12 A. No, it does not.

13 Q. When you review 5-B:3, which is the
14 purposes section of 5-B, is profit among the
15 purposes of a risk pool management program?

16 A. No, profit is not among the purposes of
17 a risk pool management program in 5-B:3, nor is it
18 among the purposes of the statute as a whole in
19 5-B:1.

20 Q. Is it fair to say that when a member
21 enters the pool, they may have a goal of financial
22 savings, but they don't have an expectation to
23 profit from the pool?

1 A. That is my belief as to -- based on all
2 the documents what a reasonable belief of a
3 participant would be. As I said, I've seen no
4 evidence or been given no evidence of statements or
5 writings by participants as to what their intent
6 was.

7 Q. Can we conclude, then, that your
8 opinion is with respect to the element of
9 expectation of profit, the answer is no?

10 A. Correct.

11 Q. And then, finally, talk for a moment
12 about solely from the efforts of others. You
13 mentioned when you first articulated that element
14 that there's some debate about what's meant about
15 solely, is that right?

16 A. Yes, there is some debate as to whether
17 solely is an element of the Howey test as applied
18 by state courts to the term investment contract
19 under state law.

20 Q. Is there any law in New Hampshire which
21 would suggest to you that New Hampshire deviates
22 from Howie's requirements that it be solely from
23 the efforts of others?

1 A. No, there's no law in New Hampshire.

2 Q. What is your opinion, then, based on
3 your review of the facts in this case as to
4 whether whatever surplus is generated, whatever
5 return might be made, is solely done at the
6 efforts of others?

7 A. My understanding based on documents
8 that I have reviewed is that the return of surplus,
9 whether that is in the form of dividends, as it was
10 in some years in the past, or a reduction in next
11 year's premium, or contribution as it's called,
12 varies from participant to participant based upon
13 experience.

14 Which it clearly, from the
15 participation agreement itself, a town would have
16 to conclude can be affected by the town's
17 procedures, behaviors, training and actually
18 participation in training programs that are
19 provided by the 5-B risk pools.

20 Q. So whatever a town member might get
21 back in terms of return of surplus in whatever
22 form it comes back is in part based on its own
23 claims performance, right?

1 A. Yes.

2 Q. Which it has in some measure control
3 over. It can train its employees, it can have
4 wellness programs, it can have risk management
5 programs to reduce its claims, correct?

6 A. It can affect its claims, yes.

7 Q. Right. Thank you. So can I conclude,
8 then, from your discussion, that your opinion that
9 solely from the efforts of others is also a no?

10 A. Correct.

11 MR. HOWARD: Attorney Samuels, thank
12 you. And Mr. Tilsley will have questions for you.

13 THE PRESIDING OFFICER: I see no
14 indication that other counsel for respondents wish
15 to ask questions, so we will proceed then with
16 cross-examination by Mr. Tilsley on behalf of the
17 BSR.

18 CROSS-EXAMINATION

19 BY MR. TILSLEY:

20 Q. Good afternoon, sir. How are you?

21 A. Good.

22 Q. Last question that you were asked
23 concerned your opinion that because the dividends

1 or credits were based on a municipality's actual
2 experience, it did not meet the solely from the
3 efforts of others test under Howey.

4 Assume for the minute that the dividend
5 or the credit is not based on the town's actual
6 experience, and it's on the pro rata basis, would
7 we have to say now that this meets at least No. 4,
8 solely from the efforts of others test?

9 A. If it's on the pro rata basis, and
10 there's no other conduct or efforts of the
11 participants, then, yes, it would be solely from
12 the efforts of others.

13 Q. And, again, this is the test where you
14 said there's some movement in the law as to
15 whether it's solely or primarily -- or you used
16 another word as well in your direct testimony.

17 A. It may have been substantially.

18 Q. Substantially. So there's been some
19 movement in the case law away from solely into
20 primarily or substantially?

21 A. In some states, not in New Hampshire
22 where there's no decision.

23 Q. In this case the common enterprise is

1 the pool. Is the pooling -- the risk pool,
2 correct?

3 A. Correct.

4 Q. How many risk pools does LGC have?

5 A. I think now, two. I think they had a
6 third, but I may be mistaken. The third being
7 workers' comp.

8 Q. What are the two risk pools that LGC
9 have now?

10 A. There's HealthTrust -- essentially
11 health insurance, and PLT, property and casualty
12 lines.

13 Q. And the common enterprise is the
14 operation of those pools, correct?

15 A. Correct.

16 Q. Who determines the coverage products
17 for the pools, the municipalities or the LGC? If
18 you know.

19 A. I guess I'm not sure.

20 Q. Who determines the rates that pool
21 members will be charged to participate in the
22 pools, the pool members or the LGC?

23 A. The LGC would have to determine the

1 rates.

2 Q. Who contracts to handle the claims that
3 are submitted by the insureds of the pool, the
4 members or the LGC?

5 A. Could you repeat that?

6 Q. I'll try to do it better this time.
7 Who is responsible for claims handling in these
8 pools, the members or the LGC?

9 A. The LGC handles the claims, it's one of
10 the functions.

11 Q. Who hires the actuaries to oversee the
12 pools and make sure that the pools are financially
13 healthy, the members or LGC?

14 A. That would be LGC, the statute requires
15 that.

16 Q. Are you aware that the LGC operates
17 wellness programs?

18 A. Yes.

19 Q. Part of what they offer to their
20 members?

21 A. Yes.

22 Q. You testified, I believe, that the
23 purposes of RSA 5-B do not include any kind of a

1 securities component, is that fair?

2 A. I think my testimony is that sections 1
3 and sections 3 do not include return to or
4 profit --

5 Q. Let me put it up on the screen. You
6 have it in front of you there, Mr. Samuels, so you
7 can -- if it's easier for you to read 5-B:1 from
8 the book, feel free. But 5-B:1 you would agree is
9 the purpose section of the RSA 5-B statute,
10 correct?

11 A. Yes, it's the purpose of the statute as
12 a whole.

13 Q. And among the various purposes listed
14 there are the accrual of interest in dividend
15 earnings which may be returned to the public
16 benefit, is that correct?

17 A. Yes.

18 Q. So returning interest and dividend
19 earnings are a stated purpose of RSA 5-B?

20 A. It is if you assume that to the public
21 benefit means to each participant.

22 Q. And the participants are public
23 entities, correct?

1 A. Yes.

2 Q. Certainly LGC retaining money for its
3 own purposes is not in the public benefit,
4 necessarily?

5 A. I think it could be to the public
6 benefit, but not necessarily, sure.

7 Q. I also want to take a look to section
8 5-B:5, Roman 1(c). You talked about -- I believe
9 the phrase you use was to return excess surplus.
10 Doesn't 5-B:5 require the return of all earnings
11 and surplus in excess of any amounts required for
12 administration, claims, reserves and purchase of
13 excess insurance to the participating political
14 subdivisions?

15 A. Yes, that is what it says.

16 Q. It does not make a distinction for
17 excess surplus over some other type of surplus,
18 correct?

19 A. Correct. When I said excess surplus,
20 this was the excess that I referred to.

21 Q. And it doesn't -- it says that all
22 earnings should be returned, correct? I'm sorry,
23 I shouldn't say that. When it refers to earnings,

1 it says all earnings, correct?

2 A. Yes, all earnings in excess of. Yes.

3 Q. And we saw in the bylaws that -- in
4 section 5.1 that the net income -- in the very
5 first sentence -- the net income shall accrue to
6 the members as it is earned. Is that correct?

7 A. Give me a minute, I'll find it.

8 Q. Of course.

9 A. Could you just tell me what line it's
10 on?

11 Q. Sure. 5.1, very first sentence. The
12 LGC net income shall accrue to the members as it
13 is earned? That's the very first sentence,
14 correct?

15 A. That is what it says.

16 Q. So as the net income is earned, it
17 accrues to the members?

18 A. That is what that sentence says read in
19 isolation of the rest of the section and the
20 articles.

21 Q. And reading that sentence in isolation,
22 accruing to the members means it belongs to the
23 members, correct?

1 A. Oh, no, not necessarily. I really
2 don't think so. I think accruing to the members
3 can just as well mean accrue to their benefit.

4 Q. So the members have some rights,
5 though?

6 A. The members would derive some benefit
7 from it, yeah.

8 Q. And these bylaws are adopted in the
9 participation agreement that you're offering an
10 opinion on by reference, correct?

11 A. They are referred to in the
12 participation agreement, yeah.

13 Q. Why do they call state securities law
14 Blue Sky Law?

15 A. You like testing the law school stuff.
16 There was a very early decision, I think it was
17 Kansas or Iowa, that even predated the 1933
18 Securities Act in which there was a phrase used
19 that people were selling junk securities that were
20 worth so many feet of blue sky.

21 Q. I'm sorry, I didn't hear the end.

22 A. Oh, the securities that were involved
23 in the case were like selling so many feet of blue

1 sky.

2 Q. You recognize Professor Long's treatise
3 on Blue Sky Law as an authoritative treatise,
4 correct?

5 A. Yes.

6 Q. You cite it in your opinion?

7 A. Yes.

8 Q. You talked about mutual insurance
9 company cases, correct?

10 A. Yes.

11 Q. You would agree that a mutual insurance
12 company is regulated by a comprehensive insurance
13 department regulatory process, correct?

14 A. Typically they are, yes.

15 Q. And we don't have a comprehensive
16 regulatory process under 5-B, I think you said the
17 requirements were pretty minimal?

18 A. The regulatory process is really only
19 what you see in 5-B, and it's through the Secretary
20 of State's office.

21 Q. And you also mentioned a buying
22 cooperative. We do not -- LGC is not a buying
23 cooperative, correct?

1 A. LGC is not a cooperative association of
2 some kind that's formed under any cooperative act
3 in New Hampshire, and there are cooperative acts.

4 Q. A cooperative would be a situation
5 where a bunch of towns went out and bought actual
6 insurance coverage and took advantage of lower
7 rates available to a larger group by being in a
8 cooperative, as opposed to pooling their money as
9 an alternative to coverage, is that a fair
10 distinction?

11 A. I'm honestly not sure, I haven't
12 thought about that distinction.

13 Q. Fair enough. The fact that you found
14 SEC opinion letters on mutual insurance
15 companies -- you found multiple letters, correct?

16 A. Yes.

17 Q. And an SEC opinion letter is typically
18 a no enforcement opinion, correct?

19 A. Yes, unless it's a denial of the
20 request.

21 Q. But it's not necessarily an opinion
22 that this is not a security, it's an opinion
23 that -- or a decision that we're not going to take

1 any enforcement action against this particular
2 product?

3 A. Technically, you're right, but the SEC
4 staff would not be issuing no-action letters if
5 they -- with respect to the question of whether
6 this is a security. If they believed that indeed
7 it was a security, there would be a denial.

8 Q. And the fact that so many people --
9 there's multiple SEC's opinions on mutual
10 insurance companies mean that multiple mutual
11 insurance companies have looked at their product
12 and said, we better go to some securities
13 regulator and get an opinion here so that we're
14 certain we're not violating the securities laws?

15 A. That's correct, although the opinion is
16 with respect -- then -- the opinions that I'm
17 citing are with respect to the issue at hand here,
18 which is is this instrument an investment contract.

19 Q. But the opinions you're citing are not
20 opinions on public risk pools, correct?

21 A. Correct.

22 Q. They're opinions on different types of
23 arrangements that do something similar but are

1 different?

2 A. That's correct, but the reason I cite
3 them is that the facts in pertinent part are
4 similar.

5 Q. And my point is simple, is that those
6 other entities who had similarly pertinent facts,
7 they went to their regulator and said, tell us,
8 Mr. Regulator, please give us a letter telling us
9 whether we have to do something with this product
10 as a security, correct?

11 A. Yes, that's correct.

12 Q. The regulator does not run around and
13 hand out no-opinion letters to people -- no-action
14 letters to people who may be crossing the line,
15 the no letter -- no-action letters are requested
16 by the entity's offering the product?

17 A. Always.

18 Q. You mentioned that you drafted
19 operating agreements for the two LLCs when you
20 were first retained by Mr. Frydman before you
21 became an expert in this case, is that correct?

22 A. Yes, that is correct. My firm did. I
23 was involved.

1 Q. Your firm did?

2 A. Uh-hum.

3 Q. Under your direction?

4 A. Yes.

5 Q. And the two LLCs are HealthTrust and
6 PLT, correct?

7 A. That's correct.

8 Q. So from 2003 to 2011, neither
9 HealthTrust nor PLT had an operating agreement, is
10 that correct?

11 A. What I stated in response to
12 Mr. Howard's questioning was that they couldn't be
13 located. There's reference that you will see in
14 some documents to operating agreements, and someone
15 must have thought they were going to draft them or
16 actually did draft them and perhaps they couldn't
17 be located, but in any event, in 2011 there
18 appeared to be none.

19 Q. You couldn't find any in 2011?

20 A. LGC couldn't find any in their records.

21 Q. And there were no operating
22 agreements -- there was no written document that
23 was found in 2011 that said that PLT and

1 HealthTrust were operating under LGC's bylaws as
2 opposed to their own bylaws or their own operating
3 agreement, is that correct?

4 A. No, that's not correct. I think that
5 the LGC bylaws themselves state that they will
6 govern the -- these two pools, these two LLCs.

7 Q. But you didn't find any documents in
8 the pools' corporate documents saying we are going
9 to be governed by LGC's bylaws?

10 A. Not in their organic documents, no.

11 Q. And one of the things you address when
12 you drafted operating agreements was those
13 operating agreements now say that the pool will
14 be -- will be governed under LGC's bylaws?

15 A. Correct.

16 Q. Federal securities law and state
17 securities law are not always consistent, correct?

18 A. Correct.

19 Q. In New Hampshire I think the law is
20 different on whether promissory notes are
21 securities than they would be under federal law,
22 correct?

23 A. The opinion published by Professor Long

1 would make that distinction that hasn't been
2 decided by any -- by the New Hampshire Supreme
3 Court, which is the --

4 Q. At least the bureau's position is
5 different than federal law, and that's not --
6 while that decision may be unusual, not unusual
7 for federal law and state law on securities to
8 differ?

9 A. Well, I guess it's not unusual for
10 there to be some differences, yeah.

11 Q. Does New Hampshire treat membership
12 interests in LLCs differently than federal law
13 does from a securities perspective?

14 A. New Hampshire does, yes.

15 Q. Under New Hampshire law a membership
16 interest in an LLC is always a security, correct?

17 A. It is, because that was written into
18 the statute after we passed our LLC act.

19 Q. And in the federal law it's still more
20 of a Howey type of an analysis, correct?

21 A. Congress didn't do that, so it would
22 have to be an investment contract, unless the LLC
23 issuing an instrument that fits into the laundry

1 list of stock, notes, for instance.

2 Q. Howey test as it's developed since the
3 Howey case has come out basically looks at the
4 underlying economic realities of the transaction,
5 correct?

6 A. I think that phrase comes from one of
7 the federal cases, yes.

8 Q. So it's not so much how you label
9 something, but the actual underlying facts that
10 determine whether something is an investment
11 contract under Howey?

12 A. That's correct.

13 Q. In an LLC, the members hold the
14 residual equity interest in the LLC, is that
15 correct?

16 A. Yes, the members are the equity owners
17 of the LLC.

18 Q. If the LLC dissolves, once it's paid
19 its creditors, any extra assets are going to go
20 back to the members, correct?

21 A. It will go back to some members. What
22 the statute provides is that you have to state what
23 the membership interest is. For instance, you

1 could have some members who have only a profit
2 interest, and some who have what you're referring
3 to as residual interest.

4 Q. That would be by agreement between the
5 members?

6 A. That would be by agreement, yes.

7 Q. And a membership interest in an LLC
8 equals -- is a security in New Hampshire?

9 A. Yes, it is.

10 Q. The LGC risk pools are LLCs?

11 A. Yes.

12 Q. And it's your opinion that the LGC risk
13 pools because they're LLCs are for-profit
14 entities, correct?

15 A. What I have said before is that whether
16 LLCs can be not-for-profit entities is, I believe,
17 an open question. My personal belief is that
18 they -- that they should not be, that is LLCs
19 should not be not for profit -- not-for-profit
20 entities, but the opinions on that vary not only
21 among members of the bar who practice in entity
22 law, but even among nonmembers.

23 Q. But your opinion would be that because

1 the risk pools are LLCs, they are by definition a
2 for-profit entity?

3 Let me rephrase that. Your opinion
4 would be that because the two risk pools are LLCs
5 that they cannot be a nonprofit -- a not profit
6 entity, a voluntary corporation under 292?

7 A. Well, they certainly aren't voluntary
8 corporations under 292.

9 Q. And they aren't a nonprofit because
10 they're an LLC?

11 A. They aren't nonprofit organizations in
12 my view, or shouldn't be, which isn't to say that
13 they are for-profit organizations.

14 Q. If HealthTrust decided to stop doing
15 business tomorrow, they're tired of fighting with
16 the bureau, they're going to run out their current
17 contracts and they're going to liquidate; after
18 they pay creditors and they pay claims, where does
19 the rest of the money go?

20 A. I would really have to think more about
21 that after having considered the question. I
22 really think the question is if they paid all their
23 claims and paid all their obligations and all they

1 have left is money, is that by definition excess
2 earnings and surplus, or is it equity that belongs
3 to the members? I don't know.

4 Q. What are the options? Where could the
5 money go?

6 A. If you determined that it -- that money
7 that was left over had to be excess earnings and
8 surplus, because what else could it be -- and,
9 again, I haven't thought this through -- I would
10 think that it would go back to the participants in
11 some manner, and what manner I don't know.

12 The other place to go would be if you
13 determined that it was somehow equity and there was
14 no excess earnings and surplus, it would go to the
15 member, which is LGC.

16 Q. Let's take the first scenario, you
17 determine that it belongs to the members. Aren't
18 the members then the residual equity holders in
19 the trusts?

20 A. No, because what I said -- and, again,
21 I would have to stress that I haven't thought this
22 through -- is that if you determined that it is
23 excess earnings and surplus, not equity, then the

1 money would be returned to the participants.

2 If you determined that it was, indeed,
3 equity, and not earnings and surplus, then it would
4 go to LGC as the equity member.

5 Q. How could it be anything else besides
6 earnings and surplus?

7 A. That's what I haven't thought through.

8 MR. HOWARD: Objection, argumentative,
9 and he's also explained that he can't know that
10 under the circumstances of this hypothetical.

11 THE PRESIDING OFFICER: Thank you,
12 Mr. Howard. Do you have anything to say,
13 Mr. Tilsley?

14 MR. TILSLEY: I do not.

15 THE PRESIDING OFFICER: It's been
16 granted. You can ask your next question. You've
17 had two, and that's been kind of our informal
18 rule.

19 MR. TILSLEY: I've got you.

20 BY MR. TILSLEY:

21 Q. Assume for the minute that the bureau
22 is correct, that these participation agreements
23 are securities. What are the consequences of that

1 determination? And I don't mean -- I don't mean
2 what should the hearing officer do, I mean what
3 does it mean to be a security? What do you have
4 to do?

5 A. Sure.

6 MR. SATURLEY: Objection. That is --

7 THE PRESIDING OFFICER: Time out. One
8 at a time, please.

9 MR. HOWARD: I'll defer to
10 Mr. Saturley.

11 THE PRESIDING OFFICER: Mr. Saturley,
12 objection?

13 MR. SATURLEY: Yes.

14 THE PRESIDING OFFICER: Grounds.

15 MR. SATURLEY: It's stating the
16 ultimate issue, the one that you're going to
17 decide. So it's asking him to assume everything
18 in the case that the bureau wants, and how is he
19 going to issue any answer with regards to that
20 that would possibly be relevant to his opinions
21 with regards to the issues in the case if he's
22 already assumed the answer that the bureau wants.

23 THE PRESIDING OFFICER: I think he

1 tried to withdraw it. Mr. Tilsley, you have
2 anything to say?

3 MR. TILSLEY: I don't think I tried to
4 withdraw it. I think it is relevant to understand
5 what the securities laws requires someone who
6 offers a security to do. We've heard --

7 THE PRESIDING OFFICER: No, no. Ask
8 the question again, then, because I thought you
9 said you did not mean what the hearing officer --

10 MR. TILSLEY: I'm not asking him what
11 he thinks you should do. Let me try the question
12 again.

13 BY MR. TILSLEY:

14 Q. Let's say that I'm about to go out and
15 I have something that I want to sell to you and I
16 decide it's a security, what do I have to do?

17 A. Okay. Let's say you form a corporation
18 and you're selling me stock. Generally there are
19 two consequences from the perspective of the
20 issuer, which is you. The first is you have to
21 register the offering in every state in which you
22 make it, and federally, unless there is an
23 exception from registration, or a regulator is

1 preempted from requiring registration.

2 And the second consequence is that even
3 if there is an exemption from registration, if I
4 can state this simply, under federal law and every
5 state law, you can't defraud people in connection
6 with the purchase and sale of a security.

7 Q. What is the purpose of registering a
8 security?

9 A. The purpose of registering a security
10 is clearly under the federal scheme disclosure.

11 Q. And what -- are you done? I didn't
12 mean to cut you off.

13 A. No, I wasn't.

14 Q. Go ahead, finish.

15 A. Under the state scheme it's primarily
16 disclosure, but state regulators have historically
17 taken a more interventionist view, and, frankly,
18 regulate the merits of the offering a bit.

19 Q. What types of disclosures are required
20 when you have to register a security?

21 A. If you have to register a security,
22 federally you file a registration statement, the
23 bulk of which is a prospectus. The disclosure

1 requirements are in some very lengthy regulations
2 that are difficult to comply with because they're
3 very detailed regulation, S-K, and at a state level
4 you also have to disclose things.

5 Now, very often you don't do both if
6 you have to register, and the reason being that if
7 you're registering with the SEC, normally you have
8 an exemption from registration by virtue of your
9 federal registration at the state level.

10 If you're not registering with the SEC
11 because you got a federal exception, you can find
12 yourself in a situation where you have to register
13 for state law purposes.

14 Q. When you do make disclosures, who do
15 those disclosures protect?

16 A. There's no question that they're
17 intended to protect the purchasers of the
18 securities.

19 Q. So the purchasers would have to receive
20 those disclosures before they buy those
21 securities, correct?

22 A. They're supposed to.

23 Q. That's the scheme that we're dealing

1 with. When you were consulted by Mr. Frydman, I
2 think you said it was August 2011, you also
3 noticed that the annual reports that had been
4 filed by the various entities were not correct?

5 A. You're correct.

6 Q. What specifically did you notice?

7 A. The annual reports for each of the LLCs
8 for virtually every year were -- if I can use this
9 legal term -- messed up -- in that these were
10 clearly formed a single member LLCs with LGC as the
11 single member, and they were signed in I think a
12 variety of ways by -- is it John Andrews -- do I
13 have the name right -- as -- in a manner that it
14 was unclear that he was signing on behalf of LGC as
15 the member.

16 Q. And did you need to take any action to
17 correct those inaccuracies?

18 A. We didn't need to, but in view of the
19 allegations of -- that were being made by the
20 bureau -- by this time, because this was after
21 early September when the cease and desist order had
22 been served -- my advice and LGC's belief --
23 accepted this advice -- was that we'd best just

1 clear that up and correct the record at the
2 Secretary of State's office.

3 Q. You also, when you were retained by
4 Mr. Frydman, I believe raised a concern that there
5 was not some kind of a contract between the two
6 risk pools and the LGC, is that correct?

7 A. I didn't raise that concern.

8 Q. Did you do any kind of a contract
9 between the two risk pools and the LGC?

10 A. Yes, I did, but that was generated by
11 David Frydman of telling me that there were no risk
12 pool contracts in place, and asking whether I
13 thought it advisable for there to be a risk pool
14 contract in place, and I thought it was.

15 Q. So you drafted -- or your office
16 drafted under your direction for the first time a
17 risk pool contract governing the relationship
18 between the LGC and the two pools, is that
19 correct?

20 A. You'd have to show me the agreements, I
21 don't remember clearly, sorry.

22 Q. Let me, sir, just refer to you your
23 deposition transcript. Do you recall being

1 deposed on March 29th?

2 THE PRESIDING OFFICER: Mr. Saturley,
3 you rise for a reason?

4 MR. SATURLEY: Yes, I do. I believe --
5 I thought I heard him say that he'd like to see
6 the agreement that he's being asked about, not
7 about his deposition. So I think that's a small
8 request from the witness, and it would aid the
9 testimony.

10 THE PRESIDING OFFICER: Mr. Samuels, if
11 you saw the agreement, would it aid your
12 testimony?

13 THE WITNESS: Yes, that's why I'd like
14 to see them.

15 THE PRESIDING OFFICER: Okay, could
16 someone provide him with that? It will quicken
17 your testimony, sir?

18 THE WITNESS: I think it will, because
19 I don't know the answer.

20 THE PRESIDING OFFICER: Mr. Tilsley.

21 MR. TILSLEY: I don't have the
22 agreement with me, but I have an answer --

23 THE PRESIDING OFFICER: Well, do we

1 have it in the room? We have 200 boxes in the
2 room.

3 BY MR. TILSLEY:

4 Q. Sir, I'm going to show you a document
5 that's -- I think it's Exhibit 216. It's entitled
6 a Pool Risk Management Program Agreement. Do you
7 recognize that document?

8 A. Give me a minute.

9 Q. Sure.

10 A. Yes, I do.

11 Q. And is that a pool risk management
12 program agreement that was drafted under your
13 direction?

14 A. It was.

15 Q. And was that a response to
16 Mr. Frydman's request to draft an agreement to
17 cover the relationship between LGC and
18 HealthTrust?

19 A. Yes, but, frankly, that's the part of
20 your question that confused me. This is a
21 three-part agreement, not a two-part agreement.

22 Q. This covers LGC, correct?

23 A. Yes.

1 Q. HealthTrust, Inc.?

2 A. Yes.

3 Q. And HealthTrust, LLC?

4 A. Yes.

5 Q. HealthTrust, Inc. is the predecessor
6 health trust that you revived when you realized
7 that there had been a mistake with the Delaware
8 registration process, correct?

9 A. Correct.

10 Q. And HealthTrust, LLC was the new LLC
11 that was created and which is now operating the
12 HealthTrust pool as a subsidiary of LLC, correct?

13 A. Right.

14 Q. Those three parties are all part of
15 this agreement that was drafted under your
16 direction?

17 A. With LGC that was the parent, yes.

18 Q. Do you know if the similar agreement
19 was drafted between the LGC and PLT entities?

20 A. Yes, nearly identical.

21 Q. You don't know what a mutual insurance
22 company does with its surplus, correct?

23 A. I don't know for certain. I do believe

1 that I think I do. I have an idea.

2 Q. What's that, I'm sorry?

3 A. I have an idea, yeah.

4 Q. Did you have an idea when you reached
5 your opinion?

6 A. Yes, I probably did.

7 Q. And I'm going to ask you if you recall
8 your deposition on March 29th, I believe. Do you
9 recall me taking your deposition on March 29th?

10 A. I recall it, but I'm not recalling the
11 date, I don't think that's important.

12 Q. Okay. Let me show you, sir, page 43 of
13 the transcript. Didn't I ask you at line 4, what
14 do mutual insurance companies do with their excess
15 surplus? And your reply was, I don't know; I'm
16 not an insurance expert.

17 A. That's correct, and it's consistent
18 with what I just said, I don't know, but I have an
19 idea.

20 Q. There is one case dealing with the
21 issue of whether a public risk pool constitutes a
22 security, correct?

23 A. There's one case I think has been cited

1 here that I'm aware of, yeah.

2 Q. And that's the Naylor case in Indiana?

3 A. That's correct.

4 Q. When a municipality or school district
5 enters into a participation agreement with one of
6 these risk pools, they pay money, correct?

7 A. They pay money, yes.

8 Q. And the potential benefits that they
9 receive by participating in the risk pool are
10 financial, correct?

11 A. Well, the financial benefits are among
12 the benefits that they receive.

13 Q. Insurance coverage is ultimately about
14 getting paid money for certain events or costs or
15 things like that, correct?

16 A. Insurance is about that, yes.

17 Q. You would acknowledge that the pools
18 have both downside and upside risk, correct?

19 A. I don't know if I can do this; risk to
20 whom?

21 Q. To a person entering into the pool. If
22 I enter into a participation agreement, I've got
23 downside risk and upside risk, correct?

1 A. I think that the downside risk to a
2 pool participant of entering into the pool would be
3 not realizing the upside risk.

4 Q. So there is upside risk, correct?

5 A. Yes.

6 Q. And there is downside risk?

7 A. Yes. And I don't mean to be a wiseguy,
8 but when you talk about downside risk, it sounds
9 like you can lose money, which isn't the case. My
10 understanding is that there are no retroactive
11 premiums, but I could be wrong.

12 Q. You at your deposition acknowledged --
13 and I would be happy to show it to you, I don't
14 want to confuse you -- on page 48, beginning with
15 line 14, that there was downside risk for a pool
16 participant who beats the average?

17 MR. SATURLEY: That's not the question.

18 A. Can you point that out to me again?

19 THE PRESIDING OFFICER: Excuse me,
20 gentlemen, this is what happens when we get too
21 close to each other, you both want to talk at the
22 same time.

23 Once again, you're both intelligent

1 people in this area, but I'm going to try to
2 separate you somewhat. I understand it might not
3 have been the exact question, but I'm still
4 attentive, so let's see if we can try that
5 exchange again.

6 MR. TILSLEY: Sure, let me try it
7 again, and I'll pull out my other copy so I don't
8 have to breathe down his neck.

9 BY MR. TILSLEY:

10 Q. Sir, page 48, line 14. I asked you,
11 and there's downside risk to pooling the money,
12 isn't that correct? And you answered that there
13 was downside risk to pooling money for any one
14 pool participant who beats the average.

15 A. That's correct, but that's risk in
16 contrast to not participating in the pool and
17 self-insuring.

18 Q. But if you participate, there is a
19 downside risk if you beat the average?

20 A. There is a downside risk if by
21 self-insuring you would have incurred fewer losses
22 than the pool average, yes.

23 Q. Thank you. When you talked about the

1 first element in the Howey test, investment of
2 money, you said it really goes to whether there is
3 an intent to invest money, correct? And the third
4 element is expectation of profits, which are kind
5 of intertwined to a certain extent, is that fair?

6 A. I think that it's easy to flow pretty
7 seamlessly from one element to the other.

8 Q. And when we're talking about securities
9 registration, marketing materials are part of what
10 has to be registered and disclosed as part of the
11 process, correct?

12 A. Well, if you weren't exempt from
13 registration, that is if you didn't have an exempt
14 security or exempt transaction, two types of
15 exemptions, and you had to register, you would file
16 a registration signal, the substance of which would
17 be a prospectus or an offering circular or an
18 offering memorandum. In a federal registration you
19 don't have advertising materials.

20 Q. Marketing materials in an exemption
21 situation or a state situation could make promises
22 that dealt with the first and third elements of
23 the Howey test, correct?

1 A. The marketing materials could certainly
2 contain representations that would lead a person to
3 believe they were making an investment and should
4 expect a profit.

5 Q. Assume, again, for a minute the
6 following hypothetical, that we have risk pool
7 contracts are returning surplus annually to their
8 members by a dividend. Assuming there's a finding
9 that those contracts are securities. If the
10 return of profit methodology then changes from an
11 annual dividend check to a credit on next year's
12 rate, does that change the analysis as to whether
13 it's a security?

14 MR. HOWARD: Objection.

15 MR. SATURLEY: Objection.

16 THE PRESIDING OFFICER: One at a time,
17 gentlemen. Mr. Howard, would you like to lead on
18 this one?

19 MR. HOWARD: I guess I have to start
20 with one of the assumptions -- first of all,
21 there's no basis in the record for the assumptions
22 that he's asking him to make. But one of the
23 assumptions he just asked him to make was assume

1 it was found to be a security, now he's asked
2 would it then be a security. I think the bureau's
3 expert said that's tautological.

4 THE PRESIDING OFFICER: I'm sorry, what
5 was the word?

6 MR. HOWARD: Tautological. Didn't know
7 what it meant then, but I looked it up when I got
8 home.

9 THE PRESIDING OFFICER: Would you want
10 to share that with us?

11 MR. HOWARD: I think it kind of means
12 the question is circular, it answers itself. So
13 that's my objection, that there's no basis in the
14 record for the assumption, and he's asked him to
15 assume a fact and then to say would that fact then
16 be true.

17 THE PRESIDING OFFICER: Mr. Saturley,
18 same basis?

19 MR. SATURLEY: Same, much more eloquent
20 than I could.

21 THE PRESIDING OFFICER: Very good.
22 Mr. Tilsley.

23 MR. TILSLEY: I asked him to assume a

1 fact, I then asked him to make a change to those
2 facts and tell me if that change would affect the
3 analysis. So it certainly is not tautological.

4 THE PRESIDING OFFICER: Mr. Saturley
5 first this time.

6 MR. SATURLEY: He didn't assume him to
7 assume a fact -- he may have asked him to assume
8 some facts -- he asked him to assume a legal
9 conclusion and then asked him an opinion about the
10 legal conclusion which he already told him to
11 assume.

12 THE PRESIDING OFFICER: Mr. Howard?

13 MR. HOWARD: Same basis.

14 THE PRESIDING OFFICER: Excellent.
15 This always seems to happen at this hour of the
16 days. I'll recognize Mr. Tilsley for his second
17 chance.

18 MR. TILSLEY: I have nothing further,
19 sir.

20 THE PRESIDING OFFICER: Thank you. You
21 have nothing further --

22 MR. TILSLEY: Further on this issue.

23 THE PRESIDING OFFICER: -- on this

1 issue.

2 MR. TILSLEY: You want me to rephrase
3 the question?

4 THE PRESIDING OFFICER: I would love
5 you to take a different approach.

6 MR. TILSLEY: That would be fine.

7 THE PRESIDING OFFICER: Granted. The
8 objections are granted.

9 MR. HOWARD: Thank you.

10 BY MR. TILSLEY:

11 Q. Let's talk about a more standard
12 security. XYZ Corp., they issue a dividend check
13 to their shareholders every year. Stock in XYZ is
14 a security, is that correct? Publicly traded
15 stock in XYZ.

16 A. Let's assume so. There are instances
17 where stock has been held not to be securities.

18 Q. Let's assume we have a stock that's a
19 security, they issue a dividend check every year.
20 That company then decides that rather than issue a
21 dividend check they're going to give their
22 shareholders some kind of a credit. Does that
23 change the analysis as to whether that particular

1 stock is a security?

2 MR. HOWARD: Once again, I'll make the
3 same objection.

4 THE PRESIDING OFFICER: Okay.

5 MR. HOWARD: He said the legal position
6 of this stock is it's a security. So one of the
7 assumptions is it's a security. It's already been
8 determined to be that. So the hypothetical
9 doesn't, first of all, make any sense.

10 THE PRESIDING OFFICER: It would make a
11 difference -- I'm sorry, Mr. Saturley, similar
12 basis?

13 MR. SATURLEY: Similar.

14 THE PRESIDING OFFICER: Very good. Do
15 you feel a need to say anything further at this
16 time, Mr. Tilsley?

17 MR. TILSLEY: I do not.

18 THE PRESIDING OFFICER: Let me try to
19 clarify the point, Mr. Samuels. Dunkin' Donuts
20 makes an offer, I buy Dunkin' Donuts stock. I'm
21 hoping it will go up. If I get a notice from them
22 that tells me they're not going to give me a
23 dividend, they're going to give me my coffee as a

1 frequent flyer at decreased prices, does it change
2 the analysis of whether or not Dunkin' Donuts is a
3 security?

4 THE WITNESS: Let me answer it this
5 way.

6 THE PRESIDING OFFICER: Oh, my. Mr. --
7 go ahead, please.

8 THE WITNESS: The determination of
9 whether you purchased the security when you
10 purchased Dunkin' Donuts stock is made at the time
11 that you make the investment with an expectation
12 of profits.

13 THE PRESIDING OFFICER: Yes.

14 THE WITNESS: And a change in the
15 company's procedures subsequent to your investment
16 intent -- investment with intent to earn a profit
17 wouldn't change whether it is a security in your
18 hands.

19 But, there are instances where the
20 security -- so if you're looking at it from your
21 perspective, which is your question, no. But if
22 the question is will that stock perhaps not be a
23 security in a new purchaser's hands -- for

1 instance, they make another offering and there's a
2 new purchaser -- it's conceivable that even though
3 that's called stock, the change in those corporate
4 policies could render it not a security.

5 I think the case that best demonstrates
6 that is one that's been discussed and that's
7 United Housing v Forman, where it was stock that
8 was at issue, and the U.S. Supreme Court held that
9 stock in that case wasn't a security because they
10 looked at the economic realities. In that case
11 people were -- their motivation was housing, and
12 the other activities were ancillary.

13 But what if the reverse had happened
14 and they started paying huge dividends and
15 attracting purchasers of the co-op shares later
16 on; well, those new purchasers might have had an
17 investment intent.

18 THE PRESIDING OFFICER: I would love to
19 discuss philosophy after I've ruled in this case,
20 Mr. Samuels, but in that protracted description of
21 the second instance, is that the instance that's
22 before us this afternoon?

23 THE WITNESS: Just so that I'm clear,

1 the second instance being what?

2 THE PRESIDING OFFICER: The second is
3 this long explanation of you granted the first and
4 then you said but in another instance, and then
5 you gave the explanation that I'm trying to follow
6 now.

7 That description that you just gave,
8 not of my Dunkin' Donuts, okay, but you mentioned,
9 you know, in another instance. My question to
10 you, sir, is simply this, the instance that you
11 just described, is that the instance before us
12 this afternoon?

13 THE WITNESS: I believe that the
14 instance I described, that is being the securities
15 that were -- or the instrument that was issued in
16 United Housing v Forman is pertinent here, and
17 that is what we're talking about, the motivation
18 of these purchasers, just like the purchasers in
19 the Forman case is not investment with an
20 expectation of profit.

21 THE PRESIDING OFFICER: Do you have
22 anything further to say on that topic?

23 THE WITNESS: No. Except in response

1 to questions, no.

2 THE PRESIDING OFFICER: Would you
3 proceed, then, Mr. Tilsley.

4 MR. TILSLEY: I will.

5 BY MR. TILSLEY:

6 Q. In order to be a security, does the
7 expectation of profit have to come in the form of
8 a dividend check?

9 A. No, the profit doesn't have to come in
10 the form of a dividend check.

11 Q. It can come in -- it could come in the
12 form of some kind of a credit, correct?

13 A. It could -- it could come in the form
14 of credit, I suppose.

15 Q. It's your opinion, sir, that the
16 members of the LGC board owe a fiduciary duty to
17 the participants in the LGC pools, correct?

18 A. I think that they do.

19 Q. And that's a duty of care and loyalty,
20 correct?

21 A. They're summarized as a duty of care
22 and loyalty.

23 Q. And your understanding is that

1 HealthTrust and PLT have different members?

2 A. That's my understanding.

3 Q. In order for HealthTrust to give some
4 of its money to PLT, the board would have to
5 determine that it was in the best interest of
6 HealthTrust to do so in order to meet its
7 fiduciary duty, correct?

8 A. Yes, that's correct.

9 Q. And the same thing, if HealthTrust was
10 going to give some money to its parent LGC, it
11 would have to be in HealthTrust's best duty to do
12 so -- best interest to do so?

13 A. Yes.

14 Q. When you have one board dealing with
15 three different entities, and you're talking about
16 transactions between those entities, it's your
17 opinion that that board has to find that the
18 transaction is in the best interest of all
19 entities involved, correct?

20 A. I think that the standard of conduct of
21 a board member is that in good faith they have to
22 make a determination that any action is in the best
23 interest of whichever parties they are governing;

1 in this case we've got one board governing multiple
2 parties.

3 Q. So if we have a transaction with all
4 three parties, it's got to be in the best interest
5 of all three for those board members to fulfill
6 their fiduciary duties, correct?

7 A. The directors have to determine that
8 it's in the best interest of all three. There's a
9 bit of a difference there.

10 Q. If the directors determine that it's in
11 the best interest of two of the three but not one
12 of the three, the directors would not be
13 fulfilling their fiduciary duty in authorizing
14 that transaction, correct?

15 A. Can I think about that?

16 THE PRESIDING OFFICER: I'm sorry, I
17 didn't hear you, sir.

18 THE WITNESS: I was asking can I think
19 about that for just a moment.

20 THE PRESIDING OFFICER: Of course.

21 A. I think by and large that's correct. I
22 suppose there could be a circumstance where the
23 board determined that it was what I called neutral

1 to the third party, that it was neither in their
2 best interest nor contrary to their best interest.

3 Q. If HealthTrust had its own board of
4 directors, that board's duty would be to
5 HealthTrust only, is that correct?

6 A. I believe so.

7 Q. And similar with PLT?

8 A. I believe so.

9 Q. You have no opinion as to whether the
10 LGC board fulfilled its duties on the transactions
11 at issue in this case, correct?

12 A. Correct. I didn't try to determine
13 whether they made a reasonable determination of
14 best interest.

15 Q. You, I believe, have reviewed some of
16 the PowerPoints that Hinckley, Allen and Snyder
17 had presented to the board regarding fiduciary
18 duties, do you recall that?

19 A. I'm sorry, could you repeat that?

20 Q. Sure. I believe you had reviewed some
21 of the PowerPoint presentations that
22 Attorney McCue provided to the LGC board of
23 directors on various occasions, do you recall

1 reviewing those documents?

2 A. Yes, I do.

3 Q. Do you recall those PowerPoints
4 addressing transactions between the LGC and its
5 trusts and the duties that are inherent in the
6 transaction amongst these interrelated entities?

7 A. I don't recall.

8 Q. The Delaware merger documents that you
9 were asked to work on, who did the paperwork
10 originally?

11 A. I didn't work on any Delaware merger
12 documents.

13 Q. Well, the documents that had been
14 filed -- the merger documents that had been
15 attempted through Delaware, you reviewed those
16 documents, correct?

17 A. I did review them.

18 Q. And do you know who prepared those
19 documents?

20 A. My understanding, is because I was told
21 it, that Attorney Robert Lloyd prepared the
22 documents.

23 Q. But you've had a chance to review the

1 documents that were prepared and filed, correct?

2 A. Yes.

3 Q. And you do not think that the attorney
4 who prepared those met the standard of care owed
5 by the attorney to his client?

6 MR. SATURLEY: Objection. Way outside
7 the scope of this hearing.

8 THE PRESIDING OFFICER: I'm sorry,
9 Mr. Saturley?

10 MR. SATURLEY: I object. The question
11 is way outside the scope of this hearing.

12 THE PRESIDING OFFICER: Anyone else
13 weighing in? Sure, Mr. Gordon.

14 MR. GORDON: I join it.

15 THE PRESIDING OFFICER: Very good.
16 Mr. Howard?

17 MR. HOWARD: I join it. It's not a
18 relevant consideration.

19 THE PRESIDING OFFICER: Okay,
20 Mr. Tilsley.

21 MR. TILSLEY: I believe it goes
22 directly to Attorney McCue's credibility in his
23 testimony yesterday. He was asked and he answered

1 that he was subject to a possible lawsuit in that
2 case, and I think Attorney Samuel's opinion on the
3 work that they did is, in fact, relevant to this
4 case and his credibility.

5 THE PRESIDING OFFICER: Mr. Howard.

6 MR. HOWARD: Attorney McCue already
7 acknowledged his own. This question is about
8 Attorney Lloyd's conduct, and it is not relevant
9 to a determination of any issue in this case.

10 THE PRESIDING OFFICER: It's being used
11 for impeachment, is it not?

12 MR. TILSLEY: I believe so. It goes to
13 his credibility -- not his, not Dick's -- but
14 Attorney McCue's credibility as a witness on
15 behalf -- yes.

16 THE PRESIDING OFFICER: Hold on. You
17 all aren't the only ones who can take some time.

18 Rephrase your question, Mr. Tilsley.

19 BY MR. TILSLEY:

20 Q. You've reviewed the paperwork that was
21 filed in Delaware, correct?

22 A. Yes.

23 Q. In your opinion, did the person who

1 filed that paperwork meet the standard of care
2 owed by an attorney to his client in preparing
3 that paperwork?

4 THE PRESIDING OFFICER: Mr. Saturley.

5 MR. SATURLEY: I object for the same
6 reasons that have been stated. I don't believe
7 the question is any different than the one he
8 posed originally, it's outside the scope of the
9 hearing, it's irrelevant, it's not used -- being
10 used to impeach this witness, and therefore it's
11 improper in any number of ways.

12 THE PRESIDING OFFICER: Mr. Howard.

13 MR. HOWARD: And, in addition, the
14 proffered reason for it is to impeach
15 Attorney McCue. It doesn't impeach
16 Attorney McCue. It's a question of
17 Attorney Lloyd's conduct, and it's not relevant.

18 THE PRESIDING OFFICER: Understood.
19 Mr. Tilsley.

20 MR. TILSLEY: It's a question of
21 Hinckley, Allen's conduct. Attorney McCue is a
22 director of Hinckley, Allen. I think it does go
23 to the credibility of his testimony.

1 THE PRESIDING OFFICER: Of whose
2 testimony?

3 MR. TILSLEY: Attorney McCue's.

4 THE PRESIDING OFFICER: Okay, I'm going
5 to grant their objections, and you'll have to move
6 on to a different question.

7 MR. TILSLEY: I don't have anything
8 further. Thank you.

9 THE PRESIDING OFFICER: Thank you.
10 Okay, redirect, Mr. Howard.

11 MR. HOWARD: I think it's your phrase,
12 Mr. Mitchell, is it at some great risk, is that
13 what it is?

14 THE PRESIDING OFFICER: Not at all,
15 sir. Not at all. I guess just a reminder, as I
16 say, I'm attentive, and I've listened very
17 carefully to your expect, as I do all experts --

18 MR. HOWARD: I appreciate that.

19 THE PRESIDING OFFICER: -- I also
20 understand the dynamics that set in. But I
21 wouldn't want you not to accomplish your redirect
22 to the extent that you want to.

23 MR. HOWARD: I would like to make a few

1 discrete points if I could, Mr. Mitchell.

2 THE PRESIDING OFFICER: Surely.

3 REDIRECT EXAMINATION

4 BY MR. HOWARD:

5 Q. Mr. Samuels, it's been a long
6 afternoon. Are LLC operating agreements required
7 under New Hampshire law for a member managed LLC?

8 A. No. Written operating agreements are
9 not a requirement for New Hampshire LLCs, whether
10 they're member managed or --

11 THE PRESIDING OFFICER: I'm sorry,
12 you're going to have to slow down for the
13 stenographer, and you're starting to mumble.

14 A. LLCs operating agreements are not
15 required in New Hampshire LLCs whether they're
16 manager managed, member managed, single member or
17 multimember LLCs.

18 THE PRESIDING OFFICER: Thank you.

19 BY MR. HOWARD:

20 Q. You were asked questions about whether
21 memberships in LLCs are securities under
22 New Hampshire law. In this situation under --
23 according to your understanding, do the

1 participating members, the towns and
2 municipalities, members in the pool, do they
3 become members of the LLC?

4 A. They are not members of the LLC as that
5 term is used in the Limited Liability Company Act,
6 or as I understood it was being used in the
7 questioning of me, no.

8 Q. You were asked questions about if the
9 LLC failed, where would the leftover money go
10 after everything was paid, the debts and so forth,
11 and presumably if it's a surplus or excess
12 earnings it would go back to the members.

13 If it went up to LGC, Inc. as the
14 single member of the LLC, would you agree with me
15 that the disposition of those assets would be in
16 accordance with LGC bylaws?

17 A. I'm not sure. You would have to point
18 me to the section of the bylaws.

19 Q. I was asking it more as a general
20 question than specifically what the bylaws might
21 say. If the bylaws accounted for the disposition
22 of member assets.

23 A. It really depends on what the bylaws

1 for the organization say.

2 Q. What the bylaws say. All right, thank
3 you. You were asked questions about duty of care
4 and loyalty by directors. I'll read the following
5 to you from your expert opinion and ask you
6 whether you agree with it.

7 Assuming that the LGC directors
8 adequately informed themselves, which may have
9 included relying on information and analysis
10 provided by officers, employees, professionals and
11 experts, believed in good faith that they were
12 acting in the best interests of each contracting
13 entity, and concluded that as to any transaction
14 it was fair to each equity, they would have
15 satisfied their fiduciary duties. Do you agree
16 with that statement?

17 A. Yes, I do agree with it. Very well
18 put.

19 Q. Having authored it, you should. And,
20 then, finally, you were asked some questions about
21 pool memberships here as securities. Under
22 New Hampshire law with respect to a municipality
23 or a town or a village district or a school, its

1 authority to invest, if these become securities,
2 can those towns and villages and school districts
3 and counties buy them, under current New Hampshire
4 law?

5 A. No, I think that's the irony here.
6 Under current New Hampshire law, towns and school
7 districts, et cetera, village districts are quite
8 constrained to invest in only certain instruments,
9 which tend to be very conservative instruments, and
10 they couldn't invest, so-called, in these, they
11 couldn't participate in pools, despite the fact
12 that RSA 5-B says that they can.

13 MR. HOWARD: With that, Mr. Mitchell, I
14 would also move to strike the ID on Exhibit 265,
15 which is Attorney Samuel's expert opinion.

16 THE PRESIDING OFFICER: Thank you.
17 Mr. Tilsley?

18 MR. TILSLEY: No objection to that.

19 THE PRESIDING OFFICER: Okay, then
20 seeing no other objection, then No. 265 of LGC is
21 a full exhibit.

22 (LGC Exhibit 265 was admitted into evidence.)

23 THE PRESIDING OFFICER: Mr. Saturley,

1 anything for this witness?

2 MR. SATURLEY: For this witness, no.

3 THE PRESIDING OFFICER: Mr. Gordon?

4 Seeing your head nod in the negative, he has

5 nothing. Mr. Tilsley.

6 MR. TILSLEY: Nothing further.

7 THE PRESIDING OFFICER: Mr. Samuels, a
8 question, sir, with respect to an expectation of
9 profit factor. In your testimony when you were
10 speaking of -- I think your word was intent, and
11 then we got into -- you and Mr. Tilsley got into
12 kind of a legal thing whether or not there was an
13 emergence, a progression, a movement in the law
14 towards primarily and substantially and such, do
15 you recall that area of testimony?

16 THE WITNESS: Yes, I do.

17 THE PRESIDING OFFICER: My questions
18 are much more simple than Mr. Tilsley's, okay?
19 When we're looking at income in the context here
20 of these HealthTrust -- HealthTrust and LGC now,
21 what about the investment income that the LGC in
22 the present mode, and in the earlier days the LHT,
23 Inc., and then the HT, LLC -- thank you -- what

1 about that income?

2 THE WITNESS: I'm very glad that you
3 asked me that.

4 THE PRESIDING OFFICER: Oh, okay.

5 THE WITNESS: Really, I think that that
6 income is irrelevant. And there's a great deal of
7 confusion in this case, it seems to me, with
8 respect to that.

9 THE PRESIDING OFFICER: So I would not
10 be the only one, then, that might have become
11 confused, that that was not a -- shall we say an
12 expectation of income, or profit, I should say?

13 THE WITNESS: The profit that the Howey
14 test refers to, and the profit that we should be
15 focusing on, is the profit to the person who is
16 putting the money in, the purchaser of the
17 securities, not the profit or activities --
18 whether it's investment activities or operating
19 activities -- of the company in which they are,
20 we'll call it, investing, for the purposes of this
21 question.

22 THE PRESIDING OFFICER: But if the LGC
23 were to return surplus, would that not go to the

1 member?

2 THE WITNESS: LGC has a few sources of
3 revenue, one, and by far the largest source, is
4 its contributions from its members like premium
5 payments. It has another source of revenue, like
6 most companies that have cash on hand and have to
7 do something with it, and that is investment
8 income.

9 It happens, because I looked at this,
10 that the investment income as a proportion of the
11 revenue of these RSA 5-B pools is very small
12 compared to the large contributions that it gets.
13 Over the past few years it's averaged -- past few
14 years it's around 1 percent, and the highest is
15 1.4 percent of the revenue of the pool.

16 THE PRESIDING OFFICER: Thank you,
17 Mr. Samuels. How's your portfolio done in the
18 past four years?

19 THE WITNESS: Not bad.

20 THE PRESIDING OFFICER: Thank you. I
21 have one other question, I believe, and I'll be
22 done. No, I'm done, thank you. Did I start
23 anything, gentlemen?

1 MR. TILSLEY: Not here.

2 THE PRESIDING OFFICER: It looks like I
3 haven't. I don't see anyone standing or such, so
4 Mr. Samuels, thank you for your testimony this
5 afternoon, I found it enlightening, and it helps
6 me gain knowledge towards a decision that I must
7 make in the end. You're excused.

8 THE WITNESS: Thank you.

9 THE PRESIDING OFFICER: All right, a
10 three-minute break with the normal exceptions
11 while we change witnesses.

12 (Recess taken.)

13 THE PRESIDING OFFICER: Returning from
14 our recess. We are still in the cases in chief
15 integrated, if you will, and someone has called
16 Mr. Loughlin. Who is going to take first mike?
17 Okay, Mr. Siracusa Hillman. And while he's coming
18 forward, Mr. Loughlin, would you please raise your
19 right hand.

20 (PETER LOUGHLIN, sworn.)

21 THE PRESIDING OFFICER: Please be
22 seated sir. And we've been using business
23 addresses, and would you state your name, please.

1 THE WITNESS: Peter Loughlin.

2 THE PRESIDING OFFICER: Business
3 address, sir?

4 THE WITNESS: 144 Washington Street,
5 Portsmouth.

6 THE PRESIDING OFFICER: Mr. Siracusa
7 Hillman.

8 MR. HILLMAN: Yes, I'll be examining
9 Mr. Loughlin on behalf of all respondents.

10 DIRECT EXAMINATION

11 BY MR. HILLMAN:

12 Q. Mr. Loughlin, thank you for being here
13 today. Since you have a somewhat unusual spelling
14 of your last name, would you mind spelling it for
15 the reporter.

16 A. L-O-U-G-H-L-I-N.

17 Q. Thank you. That's Irish, you explained
18 it to me?

19 A. Yes.

20 THE PRESIDING OFFICER: I didn't see it
21 as unusual at all, but go ahead, Mr. Siracusa
22 Hillman.

23 MR. HILLMAN: We have different

1 backgrounds.

2 BY MR. HILLMAN:

3 Q. Mr. Loughlin, where did you grow up?

4 A. In Portsmouth.

5 Q. Lived in New Hampshire all of your
6 life?

7 A. Other than during schooling.

8 Q. Other than during schooling. And you
9 went to college?

10 A. To Merrimack College.

11 Q. And then law school?

12 A. Yes.

13 Q. And when did you graduate from law
14 school?

15 A. 1969.

16 Q. And can you tell me a little bit
17 through your work history. What was your first
18 job after law school?

19 A. I was with the New Hampshire Legal
20 Assistance for two years, became city attorney for
21 Portsmouth in 1971, and have been in private
22 practice in Portsmouth since that time.

23 Q. And in private practice, do you have a

1 particular specialty?

2 A. My practice is pretty much exclusively
3 limited to municipal law.

4 Q. Almost exclusively municipal law. And
5 over the 30-plus years that you've been in private
6 practice, about how many municipalities in the
7 state of New Hampshire would you say you've
8 advised on one issue or another over the years?

9 A. Approximately 50, I'd say, and probably
10 40 some-odd towns, and I think I've advised every
11 city in the state except Keene and Berlin at one
12 time or another.

13 Q. And some village districts and other
14 municipal entities as well?

15 A. Yes, a lot of the village districts in
16 the seacoast area.

17 Q. So would you say you're a student of
18 municipal law in the state?

19 A. That would be fair.

20 Q. And have you published on municipal
21 law?

22 A. Yes.

23 Q. And what have you published?

1 A. There are three volumes on local
2 government law published by Lexus Publishing.
3 Volume 1 -- part of the New Hampshire practice
4 areas.

5 Q. Those are the green volumes --

6 A. Yes.

7 Q. -- that many who practice in
8 New Hampshire are familiar with?

9 A. Yes. And one volume on land use as
10 part of the practice area, and volume on municipal
11 taxation and road law.

12 Q. And when did you first publish those
13 volumes?

14 A. I think it was '91.

15 Q. And you've done supplements since that
16 time?

17 A. Every year.

18 Q. Every year?

19 A. Yes.

20 Q. And do those volumes include RSA 32 and
21 35 --

22 A. Yes, they do.

23 Q. -- as part of what they discuss.

1 A. Yes.

2 Q. And just for the convenience of the
3 reporter, we should try not to talk over each
4 other, if we can. RSA 32, would you characterize
5 that as the municipal budget law?

6 A. Yes.

7 MR. HILLMAN: And I'd like to mark 32
8 as an exhibit, RSA 32.

9 THE PRESIDING OFFICER: Do we have it
10 as an ID?

11 MR. HILLMAN: It does not have a
12 number.

13 THE PRESIDING OFFICER: Any objection?

14 MR. TILSLEY: No.

15 THE PRESIDING OFFICER: They're saying
16 no objection. We will have it admitted at LGC
17 463. We'll take a moment to have that marked now.

18 (LGC Exhibit 463 was admitted into evidence)

19 MR. HILLMAN: Can you bring up RSA 32?

20 BY MR. HILLMAN:

21 Q. Is this RSA 32 about which you were
22 speaking a moment ago?

23 A. Yes, it is.

1 Q. Part of the New Hampshire statutes,
2 correct?

3 A. Yes.

4 Q. And can we focus on 32.2 on that first
5 page. Who is regulated by the Municipal Budget
6 Law?

7 A. Every municipal corporation that has an
8 annual meeting. So that would include school
9 districts, village districts, towns, but it would
10 not include cities.

11 Q. And is that in 32.2 that you're
12 referring to?

13 A. It doesn't say it in those words, but
14 that's what the net effect is.

15 Q. Great. LGC is not one of those
16 entities, correct?

17 A. That's correct.

18 Q. And risk pools in general are not
19 entities on that list?

20 A. That's correct.

21 Q. So the Municipal Budget Law which 32.2
22 says is RSA 32-1 through 13 does not apply to LGC
23 or its risk pools?

1 A. That is correct.

2 Q. Okay. What does the Municipal Budget
3 Law do? Does it regulate -- what does it regulate
4 in chief?

5 A. It regulates or establishes the method
6 for appropriating and spending municipal funds.

7 Q. And in 32.3 which you have in front of
8 you, how is appropriate defined?

9 A. Appropriate means to set apart from the
10 public revenue of a municipality a certain sum for
11 a specified purpose and to authorize the
12 expenditure of that sum for that purpose.

13 Q. Okay, so in common speak, I guess you
14 could say, town develops a budget, and it has an
15 appropriations for particular purposes, and it has
16 a dollar amount specified for each purpose, is
17 that correct?

18 A. Yes.

19 Q. And it does that every year?

20 A. Yes.

21 Q. Unless it adopts a biennial cycle or
22 something like that?

23 A. Yes.

1 Q. Okay. Does the Municipal Budget Law
2 place certain restrictions on appropriations?

3 A. Yes.

4 MR. HILLMAN: Can we go to page 6.

5 BY MR. HILLMAN:

6 Q. If you want to turn to page 6 of the
7 PDF. Section 32.7 has one such restriction, it's
8 entitled Lapse of Appropriations. Can you explain
9 to us what that means?

10 A. Yes. Any appropriation, say, made at a
11 town meeting will expire at the end of that town
12 meeting -- excuse me, at the end of that year,
13 unless it is a nonlapsing appropriation as spelled
14 out in RSA 32:7.

15 Q. Okay, so there are annual
16 appropriations, they're for a fiscal year and then
17 they expire, and then there's a special kind
18 called nonlapsing appropriations that don't
19 expire?

20 A. Yes.

21 Q. And those can only happen by a vote of
22 the town meeting, essentially?

23 A. Yes.

1 MR. HILLMAN: And can we go down to
2 32:8.

3 BY MR. HILLMAN:

4 Q. 32:8 is entitled Limitation on
5 Expenditures. And what does that provision
6 provide?

7 A. That no municipal board can spend --
8 incur any liability involving any expenditure for
9 any money for any purpose in excess of the amount
10 appropriated by the legislative body for that
11 purpose, or for a purpose for which no
12 appropriation has been made except as provided in
13 32:9-11.

14 So the second part of it, if no
15 appropriation is made for something, then that
16 money can't be spent for that purpose.

17 Q. But otherwise you are limited to the
18 amount appropriated, and you can't expend,
19 otherwise, except as provided in 32:9-11.

20 A. Yes.

21 Q. And can we go to the top of the next
22 page. RSA 32:10, Transfer of Appropriations. And
23 is this one of the limitations -- one of the

1 exceptions that you were speaking about a moment
2 ago?

3 A. Yes.

4 Q. And if you could just read 1 -- Roman 1
5 and A, just below that to yourself for a moment.

6 A. Okay.

7 Q. And can you explain what this exception
8 provides?

9 A. That it's possible for the governing
10 body of the municipal entity to transfer funds in
11 the budget from one line item to another so long as
12 they do not go over the total amount of the budget.

13 Q. So a town budgets a hundred thousand
14 dollars for police and a hundred thousand dollars
15 for fire -- let's keep it simple, that's the total
16 town budget. They spent 80,000 on police, you
17 know, it was a good year, there wasn't much
18 overtime, but they had a lot of fires, and they
19 had a lot of fire overtime. Could they do a
20 transfer and spend 120 on the fire without a
21 violation of the Municipal Budget Law, as long as
22 they stayed under that 200 that was appropriated
23 for the year?

1 A. Yes, they could.

2 Q. They could. Okay, thank you. We're
3 going to go to 35. What is RSA 35?

4 A. Statute dealing -- a statute dealing
5 with the capital reserve funds.

6 MR. HILLMAN: I'd like to mark 35 as an
7 exhibit.

8 THE PRESIDING OFFICER: Any objection?

9 MR. VOLINSKY: None.

10 THE PRESIDING OFFICER: Not having been
11 marked for identification, I'm going to rely on
12 Ms. Worthen for the number.

13 Thank you, LGC 464 I believe is going
14 to be a copy of Chapter 35.

15 (LGC Exhibit 464 was admitted into evidence.)

16 BY MR. HILLMAN:

17 Q. So you said it deals with capital
18 reserve funds.

19 MR. HILLMAN: Can we zoom in on 35:1.

20 BY MR. HILLMAN:

21 Q. And 35:1 provides for who is permitted
22 to establish a capital reserve fund, is that
23 correct?

1 A. Yes.

2 Q. And who does 35:1 say can establish
3 such a fund?

4 A. Any town, school district, village
5 district or county as provided by RSA 35:3.

6 Q. A similar group to the group regulated
7 by RSA 32 of the Municipal Budget Law?

8 A. Yes.

9 Q. Okay. If we can go to the top of the
10 next page. At the top of the next page we have
11 35:1-C, and this refers to noncapital reserve
12 funds. What is a noncapital reserve fund?

13 A. Essentially a fund for something other
14 than a capital improvement. In this case it talks
15 about maintenance and operation of a specific
16 public facility or type of facility, so it would be
17 something other than a new road grader.

18 Q. And it could also be for any other
19 distinctly stated specific public purpose, is that
20 right?

21 A. Yes, it could.

22 Q. Okay, so we have capital reserve funds
23 and noncapital reserve funds, they're pretty

1 similar. In fact, this provision says that
2 noncapital reserve funds are subject to the same
3 provisions and limitations as capital reserve
4 funds?

5 A. Yes.

6 Q. So functionally they're identical,
7 they're just for two different purposes?

8 A. Yes.

9 Q. Or potential purposes. Okay. And,
10 again, it's the same entities subject to the
11 Municipal Budget Law are subject to this RSA 35 on
12 noncapital and capital reserve funds. And is that
13 the same as the nonlapsing funds that you spoke
14 about earlier?

15 A. It could be. It probably would be. I
16 don't know that they're always going to be
17 identical, but it could be.

18 Q. But these are versions, at least, of
19 nonlapsing funds?

20 A. Yes.

21 Q. Okay, thank you.

22 MR. HILLMAN: We can take that back.
23 And I'm all set.

1 BY MR. HILLMAN:

2 Q. One more. In 35 there's also a
3 provision known as 35:9, is that correct?

4 A. Yes.

5 Q. Are you familiar with this statute?

6 A. Yes.

7 Q. What is this statute?

8 THE PRESIDING OFFICER: Mr. Siracusa
9 Hillman, excuse me, our technology hasn't caught
10 up with you just yet.

11 MR. HILLMAN: Okay. I spoke too soon
12 in telling her to take it down, there was one more
13 to look at.

14 THE PRESIDING OFFICER: That's quite
15 all right. It could have been a worse error.

16 BY MR. HILLMAN:

17 Q. Mr. Loughlin, what is RSA 35:9?

18 A. It's titled Investment, and it spells
19 out what capital reserve funds can be invested in
20 when they are in the hands of the treasurer or the
21 trustee of the trust fund.

22 Q. And does it apply to the noncapital
23 reserve funds as well?

1 A. Yes.

2 Q. So this is a statute that applies to
3 capital reserve funds and noncapital reserve
4 funds, which you had just told us are funds that
5 can be held by towns, school districts, village
6 districts, counties, following a vote?

7 A. Yes.

8 Q. Is that correct? Okay. And does this
9 statute specify specific sorts of investments that
10 are permitted for those funds?

11 A. Yes, it does.

12 Q. And why do these limitations exist for
13 towns?

14 A. To provide guidance for town officials
15 to know what -- what is a reasonable investment of
16 their funds.

17 Q. Do town officials necessarily have
18 significant investment experience before they
19 become town officials?

20 A. Not necessarily, and probably not
21 likely.

22 Q. So not likely. So does this statute
23 provide an aid to them in that instance?

1 A. Yes. I mean, you could have -- in
2 towns a treasurer probably has a one year or
3 three-year term and may know absolutely nothing
4 about investments, and this would provide some
5 guidance.

6 Q. Okay, so town treasurer, trustee of a
7 trust fund, investing in one of these capital
8 reserve or noncapital reserve funds, they have to
9 follow this statute?

10 A. Yes.

11 Q. Anyone else?

12 A. No.

13 Q. Are you aware of any statute or
14 provision of law that applies either the
15 provisions of RSA 32 that we discussed dealing
16 with appropriation, or the provisions of RSA 35
17 dealing with capital reserve and noncapital
18 reserve funds to LGC?

19 A. No.

20 Q. To the risk pools?

21 A. No.

22 Q. Does either of these statutes regulate
23 the practices of the risk pools in any way?

1 A. No.

2 Q. Are any of the funds held by LGC or a
3 risk pool town funds? And by town I mean to
4 include municipalities of various sorts, in the
5 way that this statute refers to town funds.

6 A. No.

7 Q. The net assets or capital on the book
8 of LGC, or of the particular risk pools, are those
9 town funds?

10 A. No, they are not.

11 Q. They came -- some of those funds were
12 contributed by the towns, right?

13 A. Yes.

14 Q. But once contributed are they town
15 funds?

16 A. No.

17 Q. We've heard some talk about what would
18 happen if the risk pool were to dissolve, and
19 assume for the purposes of the question that the
20 funds would go back to the members.

21 Capital on LGC's books, risk pool
22 dissolves, the fund goes back to the members.
23 While the risk pools remain a going concern, are

1 those funds the town funds?

2 A. They are not.

3 Q. Do the towns have any -- well, strike
4 that. RSA 5-B, which I realize you are not an
5 expert in, provides that earnings and surplus
6 above a certain amount is to be returned to
7 members. While that surplus is on the books of
8 LGC, is it town funds?

9 A. No.

10 Q. Does it have to be invested in
11 accordance with 35:9?

12 A. No.

13 Q. And why does 35:9 not have to be
14 followed for the funds on the books of LGC?

15 A. Because it only applies to funds that
16 are being actually held and under the control of
17 the municipality.

18 Q. Okay. So LGC itself is not obligated
19 by the Municipal Budget Law?

20 A. That's right.

21 Q. And funds held by LGC are not municipal
22 funds?

23 A. That's right. They would -- they

1 were -- well, they got to LGC because, for example,
2 a community bought an insurance policy from LGC,
3 but -- so it's appropriated to buy insurance, so at
4 one point they were local funds, but then they're
5 expended and -- to buy a contract to buy insurance
6 from LGC.

7 Q. Okay, so a town wants insurance,
8 perhaps it goes out and get some different quotes,
9 yes?

10 A. Yes.

11 Q. And one of those quotes comes from
12 LGC --

13 A. Yes.

14 Q. -- in the scenario that we're crafting
15 here. The town decides to purchase its insurance
16 from LGC.

17 THE PRESIDING OFFICER: Could you put
18 that in the form of a question, Mr. Siracusa
19 Hillman?

20 MR. HILLMAN: Sure.

21 BY MR. HILLMAN:

22 Q. Well, let's do it this way. Has LGC
23 facilitated violation of the Municipal Budget Law

1 by any of its member municipalities?

2 A. No.

3 Q. You earlier went through what the
4 Municipal Budget Law requires. You explained that
5 funds cannot be spent in excess of total
6 appropriation, has that occurred?

7 A. No.

8 Q. You explained that the funds cannot be
9 expended after the conclusion of the year when the
10 appropriation has lapsed absent something else,
11 has that occurred?

12 A. No.

13 Q. What about unexpected or so-called off
14 book revenues that come in, can those be spent
15 without further appropriation?

16 A. No, they cannot.

17 Q. Has that occurred?

18 A. No.

19 Q. You explained a town is limited by RSA
20 35:9 to what it can invest in. Have any
21 investments by a town outside of the 35:9 occurred
22 outside of the town's participation in a risk
23 pool?

1 A. No.

2 Q. So let's distinguish for a moment
3 between revenues and appropriations. What are
4 revenues?

5 A. Revenues would be funds coming into the
6 town, generally through taxation.

7 Q. So there's a -- does the town project
8 revenue as part of its budget process?

9 A. Yes.

10 Q. Okay. So there's a projection of
11 revenue and an appropriation for expenses?

12 A. Yes.

13 Q. That's right? Okay. We've heard some
14 talk about a GMR, a guaranteed maximum rate. Are
15 you familiar with that concept?

16 A. Yes.

17 Q. So testimony earlier in the proceedings
18 was to the effect that LGC has a January pool and
19 a July pool, and for the July pool it sets rates
20 once in advance as part of the guaranteed maximum
21 rate process, and then sets rates again closer to
22 the time the town's -- the fiscal year is going to
23 start -- or at least the pool year is going to

1 start -- and that rate may differ from the
2 guaranteed maximum rate, are you familiar with
3 that?

4 A. Yes.

5 Q. Does any town actually spend the
6 guaranteed maximum rate for its insurance?

7 A. Could you say that again?

8 Q. Sure. So let's say a town first
9 receives a guaranteed maximum rate quote, and then
10 later on it receives another quote as we're
11 getting closer to the coverage year. What rate
12 does the town pay?

13 A. The town will pay the real rate rather
14 than the estimated rate.

15 Q. Okay, so we have an estimate. Might
16 the town use the estimate for budgeting purposes?

17 A. Yes, it probably would.

18 Q. It probably would, okay. So let's say
19 LGC quotes \$100,000 for a town's insurance costs
20 for the year in the guaranteed maximum rate
21 practice.

22 A. Okay.

23 Q. How much would the town likely

1 appropriate?

2 A. Probably would appropriate the full
3 amount, 100,000.

4 Q. And let's say when the rate actually
5 comes in it's only \$80,000. In that event the
6 town only has to expend \$80,000 for its insurance,
7 is that right?

8 A. That's right.

9 Q. So we've appropriated 100, but we've
10 only spent 80. Is there any violation of the
11 Municipal Budget Law by that fact?

12 A. No, it is not.

13 Q. Is the municipality allowed to do
14 anything with that other 20,000 that is
15 appropriated but hasn't been expended for
16 insurance?

17 A. If it was a straight appropriation,
18 they would be free to -- the governing board would
19 be free to move those -- that \$20,000 to another
20 line item.

21 Q. And they could do that, no violation of
22 the Municipal Budget Law?

23 A. That's correct.

1 Q. So it's sort of similar to my police
2 overtime and fire overtime scenario that I
3 sketched out earlier.

4 A. Yes.

5 Q. Okay. We heard some talk about the
6 town of Northampton creating a health premium
7 stabilization fund to hold appropriated funds that
8 constituted that difference between the guaranteed
9 maximum rate and the rate that came in later. Is
10 that something towns are legally allowed to do?

11 A. Yes.

12 Q. Are they obligated to do that?

13 A. No, they are not.

14 Q. If a town does not create such a
15 nonlapsing fund, is it in violation of the
16 Municipal Budget Law?

17 A. No, it is not.

18 Q. What does a nonlapsing fund enable the
19 town to do?

20 A. If the money -- for example, you put
21 that \$100,000 for insurance based on the GMA into a
22 nonlapsing fund, so that when -- and you had the
23 20,000 that came back, the 20,000 would go into

1 the -- into the nonlapsing fund, and the governing
2 board would not be able to spend it for some
3 purpose other than insurance.

4 Q. So it ties the governing board's hands?

5 A. Yes.

6 Q. But the town doesn't have to do that?

7 A. That's correct.

8 Q. And would a nonlapsing fund allow those
9 funds to then be expended in a future budget year?

10 A. Yes.

11 Q. For whatever purpose the nonlapsing
12 fund was set up?

13 A. Yes.

14 Q. So it gives the town some additional
15 options, but is it really required for a town if
16 the town merely wishes to use the funds in the
17 same budget year for a different purpose?

18 A. Give the town an additional option;
19 probably gives the selectmen a lesser option.

20 Q. Thank you.

21 THE PRESIDING OFFICER: Mr. Siracusa
22 Hillman, could you try to pose your inquiries of
23 the witness as a question as punctuation as so

1 taken by the stenographer?

2 MR. HILLMAN: Yes.

3 THE PRESIDING OFFICER: Thank you.

4 MR. HILLMAN: I will try.

5 BY MR. HILLMAN:

6 Q. Does LGC hold any nonlapsing funds or
7 capital reserve funds in the sense that we've just
8 been speaking about?

9 A. No.

10 Q. Or in the sense used by RSA 35 at all?

11 A. No.

12 Q. Are members illegally creating
13 nonlapsing funds as a result of their membership
14 in the LGC insurance pool?

15 A. No.

16 Q. Either HealthTrust or property
17 liability?

18 A. Neither.

19 Q. Why not?

20 A. Because they're -- they're -- they have
21 not -- they have appropriated the money to buy a
22 product. That was the appropriation, they
23 complied -- presumably complied with the budget

1 act, and those funds are now -- are no longer under
2 their control.

3 Q. Thank you. We've also talked a little
4 bit in this proceeding about a reduction in rates
5 through rate stabilization, a return of member
6 balance through a rate credit, are you familiar
7 with that concept?

8 A. Yes.

9 Q. When LGC gives a rate credit to its
10 member -- to a member, does that result in revenue
11 to the municipality?

12 A. No, it does not.

13 Q. Why not?

14 A. Because it's not money -- it's not
15 money that ever goes into the hands of the town
16 officials.

17 Q. And does doing rate credits either
18 violate or facilitate any violation of the
19 Municipal Budget Law?

20 A. No, it does not.

21 Q. Does LGC holding funds from year to
22 year and applying them as a credit or rate
23 stabilization violate the Municipal Budget Law?

1 A. No, it does not.

2 Q. And does it facilitate any violation by
3 one of its member municipalities?

4 A. No, it does not.

5 Q. As a practical matter, why might a
6 municipality prefer rate stabilization over a
7 return one year and a higher rate the following
8 year?

9 A. To budgetary purposes, to have a -- we
10 do spikes in the budget. Sort of the same reason
11 that municipalities have a fund balance at the end
12 of the year, and they can use that -- part of that
13 fund balance to reduce taxes the next year. And
14 sometimes there's a dispute in town that this is
15 our money, you should be reducing our taxes.

16 But if you were to use all of that
17 money in one year to reduce taxes, the next year
18 you might have an emergency that you would need the
19 money for, or you wouldn't have a balance to soften
20 or make the -- make the payments even. So it's --
21 the reason you would like that type of arrangement
22 is to have a budget process or no spiking in your
23 budget.

1 Q. So towns like having no spiking in
2 their budgets?

3 A. That's my understanding that they do.

4 Q. Does it create stabilization for the
5 town?

6 A. Yes.

7 Q. Stability for the town, excuse me.
8 Switching topics, you mentioned earlier that you
9 advise municipalities, they're your clients,
10 correct?

11 A. Yes.

12 Q. Have you ever advised one of your
13 client municipalities that purchasing insurance
14 from LGC was an investment in a security?

15 A. No.

16 Q. Do your municipal clients, as far as
17 you know, think about purchasing insurance from
18 LGC as an investment of town funds?

19 A. To the best of my knowledge, they think
20 about buying insurance, that they -- they have a
21 need to buy health insurance for their employees,
22 property insurance, and that's what they go into
23 the marketplace to get.

1 Q. Are towns permitted to appropriate
2 money as part of their budget cycle for investment
3 purposes?

4 A. No.

5 Q. What are the factors a town would use
6 in trying to determine whether or not to purchase
7 a LGC product?

8 A. I suppose that rate is going to be one
9 of the things. Probably a major component is going
10 to be relationships that if -- if a municipality
11 has a relationship with LGC, such as the fact that
12 LGC puts on seminars for every type of municipal
13 officials from tax collectors to assessors to
14 zoning boards to trustees of trust funds, so that
15 this -- my guess is that the result is it's more
16 like a family relationship.

17 If you have a neighbor that lets you
18 borrow his wheelbarrow and stepladder, and he sells
19 insurance, you're more apt to buy that insurance
20 from him than the guy that just comes by the door.

21 MR. HILLMAN: At this point I'd like to
22 move Mr. Loughlin's report into evidence. It's
23 LGC -- it's been marked as LGC 264, and we're

1 doing so because Mr. Loughlin has testified on the
2 issues that were covered in his report.

3 THE PRESIDING OFFICER: Any objection?

4 MR. VOLINSKY: No objection.

5 THE PRESIDING OFFICER: Seeing no
6 objection, Mr. Loughlin's report is admitted as
7 LGC 264.

8 (LGC Exhibit 264 was admitted into evidence.)

9 MR. HILLMAN: Thank you. No further
10 questions.

11 THE PRESIDING OFFICER: Thank you,
12 Mr. Siracusa Hillman. Mr. Saturley, anything,
13 sir?

14 MR. SATURLEY: No, thank you,
15 Mr. Mitchell.

16 THE PRESIDING OFFICER: Thank you.
17 Mr. Howard?

18 MR. HOWARD: No, thank you,
19 Mr. Mitchell.

20 THE PRESIDING OFFICER: Okay,
21 Mr. Volinsky?

22 MR. VOLINSKY: Yes, thank you.

23 CROSS-EXAMINATION

1 BY MR. VOLINSKY:

2 Q. Good afternoon, Mr. Loughlin.

3 A. Good afternoon.

4 Q. Am I right to understand that, by and
5 large, municipalities in New Hampshire budget on
6 an annual basis?

7 A. Yes.

8 Q. So monies are generated from taxes and
9 other sources, and they come into a municipality
10 during a year, and they must be entirely spent by
11 the end of the year, absent the use of these
12 nonlapsing funds, right?

13 A. Essentially. I wouldn't say entirely
14 spent. They may go into -- if they aren't spent,
15 it goes into fund balance.

16 Q. Right.

17 A. But if they aren't set aside or
18 earmarked or encumbered in some way, they would
19 lapse, but they would go into the fund balance.

20 Q. And then the fund balance is used for
21 the next following budget to depress the need for
22 revenues, or they become revenues in the next --

23 A. It can be used for that purpose, yes.

1 Q. So either use it this year, or it
2 becomes part of the fund balance for next year,
3 correct?

4 A. Or even the next year after that.

5 Q. It would carry through another budget
6 cycle and be available?

7 A. It could, yes.

8 Q. So let's see if I can use an easy
9 example. Let's assume I'm a small town,
10 Northampton, and I enter into a contract with that
11 snowplow contractor, and that snowplow contractor
12 charges me a hundred bucks a plowing, and I give
13 him a retainer in this year for 500 bucks, five
14 plowings. All right, are you with me?

15 A. Yes.

16 Q. And assume that because there's not
17 much snow he only plows four times, so he's used
18 400 of 500. All right, are you with me?

19 A. Yes.

20 Q. Northampton likes this snowplow
21 contractor and intends to hire him the next year
22 with a new contract. Even though that's the
23 intent, the snowplow guy has to return the hundred

1 bucks to the town that he didn't use in the year
2 in question, correct?

3 A. I'm not sure about that. I guess it
4 would depend on what the agreement was, that if --
5 if he were on a flat rate, that --

6 Q. A hundred bucks a plowing is my
7 hypothetical.

8 A. Okay.

9 Q. \$500 retainer, which would be five
10 plowings. He only does four, which leaves 100
11 over; he's got to return it?

12 A. And their understanding is that -- that
13 if he doesn't plow five times he gets a hundred
14 dollars back.

15 Q. The town gets a hundred dollars back.

16 A. Yes.

17 Q. Even if the town wants to hire him for
18 the next year and intends to execute a new
19 contract for the next year, if the contract is as
20 I've described, the snowplow contractor must
21 return the \$100 and be reappropriated the next
22 year, isn't that right?

23 A. If that's the understanding -- if the

1 idea -- if the agreement was that he would have to
2 give the hundred dollars back.

3 Q. Right. That's what I'm proposing as a
4 hypothetical.

5 A. Yes.

6 Q. He would have to give it back, right?

7 A. Yes.

8 Q. And if they wanted to execute a new
9 contract for the next year, they appropriate again
10 and pay him a retainer again, correct?

11 A. Yes.

12 Q. And so the snowplow contractor, even
13 though he's got a great relationship with the
14 town, they like him, if the contract is of the
15 nature that I've described, even though the
16 selectmen may want to, they can't just say, hold
17 onto that hundred bucks and apply it to the next
18 year's contract, can they?

19 A. I would say they could not.

20 Q. And is that a product of what we call
21 budgeting in gross?

22 A. I guess in a sense it is.

23 Q. Which means you budget in gross for a

1 year; either use the money, or it goes into the
2 fund for next year?

3 A. Fund.

4 Q. Now, the exception to that would be
5 using nonlapsing accounts or nonlapsing trusts,
6 correct?

7 A. That would be an exception.

8 Q. So go back to my snowplow contractor.
9 Instead of doing it the way I've described, let's
10 assume the town sets up a nonlapsing, noncapital
11 fund for snowplowing, and the snowplow contractor
12 returns his hundred dollars at the end of the year
13 because he hasn't plowed five times.

14 The town in that scenario would be able
15 to put the hundred dollars into the nonlapsing
16 account and hold it, not return it to the
17 taxpayers, hold it, and apply it to the following
18 year's snowplowing, right?

19 A. That's correct.

20 Q. And in order to have that kind of
21 nonlapsing account in a typical town, there has to
22 be a special warrant article that approves the
23 creation of that kind of an account, correct?

1 A. Yes.

2 Q. And once you have that approval, you
3 can carry money year to year in it, correct?

4 A. Yes.

5 Q. For an identified purpose?

6 A. Yes.

7 Q. And as Mr. Hillman asked you, an
8 appropriate identified purpose may be to effect
9 rate stabilization of healthcare premiums,
10 correct?

11 A. Yes.

12 Q. But absent setting up a trust fund, or
13 a nonlapsing account, a town cannot hold money
14 year to year to reduce rate spikes in healthcare
15 premiums, correct?

16 A. Yes, that's correct.

17 Q. And the town similarly cannot say, Joe
18 down the street, we trust you, we can't hold the
19 money year over year for rate stabilization; Joe,
20 you hold it for us, and when we need it we'll call
21 upon you. The town can't do that, can they?

22 A. Well, when he gives the money back --
23 and he would have to give the money back under that

1 scenario -- it goes into the -- into the fund
2 balance.

3 Q. And then gets returned in the next
4 budget year, correct?

5 A. Yes.

6 Q. When Mr. Hillman was asking you about
7 transfers of funds between the fire and the police
8 department, those transfers are legal if they
9 happen within the then existing budget year?

10 A. Yes.

11 Q. They're not legal if they go over into
12 the next budget year?

13 A. That's correct.

14 Q. Do any of the towns that you represent
15 buy insurance -- health insurance from a provider
16 other than the LGC?

17 A. I do not know.

18 Q. Let me ask you to assume hypothetically
19 that a town buys their health insurance from a
20 private carrier like Aetna, for example. Do you
21 understand if a town buys from a private carrier
22 they pay the premium, and then when the premium is
23 paid, that money belongs to the private carrier?

1 A. Yes.

2 Q. And so if the private carrier has
3 guessed right, and the premium is more than the
4 cost of the actual claims, the private carrier
5 makes a premium -- makes a profit?

6 A. Yes.

7 Q. And the town has no claim on that
8 profit?

9 A. That's right.

10 Q. Do you understand that with the Local
11 Government Center, unlike the private carrier, if
12 the premium payment is more than necessary for
13 claims and operations and other expenses, there's
14 a surplus created that belongs to the member
15 municipality, do you understand that?

16 A. I understand that at some point there's
17 a surplus created, and I understand that at some
18 point that could go back to the municipality.

19 Q. And do you know enough about the bylaws
20 for the Local Government Center to tell me whether
21 the net income of its health operations belong to
22 the member when it's accrued?

23 A. I don't know when it's accrued. When

1 it's -- when it would be declared, at that -- well,
2 at some point if it was declared and sent back to
3 the municipalities, it would then be subject to the
4 Municipal Budget Law before they could do anything
5 with it.

6 Q. And if the Local Government Center
7 procedures delay the official declaration beyond
8 when the identity of the money as surplus is
9 concerned, is that consistent with the requirement
10 that the money be returned to the members and
11 handled consistent with the budget law?

12 A. I would say that it's not inconsistent
13 with it. That -- that if they delay it -- I mean,
14 if they make a management decision as to when
15 they're going to return it, at that point, from a
16 municipal budget perspective, it hasn't come into
17 the control of the governing board, and so they
18 don't have to account for it in that way.

19 Q. And if I were a municipality using my
20 Northampton hypothetical, and I knew that year
21 over year there were dividends returned in cash,
22 and then at some point in time the bylaws changed
23 to allow what we call rate crediting, would you as

1 legal counsel for the town have some concerns
2 about that change in bylaws that went from
3 dividends to a rate crediting methodology?

4 A. No, as legal counsel, I would not. I
5 mean, I would say to the town, that's a business
6 decision, do you still like doing business with
7 this organization. If they say -- and that that's
8 a policy judgment of them.

9 Q. In the towns that are members when the
10 change happens, dividends to rate crediting on the
11 one hand, and the towns that were new contracts
12 after the change is in effect, were now going to
13 return over multiple years through rate crediting,
14 any difference in your legal opinion that you
15 would give the town on the propriety of the
16 change?

17 A. I would still take the position that
18 until the monies actually were returned to the
19 town, until the town got the check, that they were
20 not subject to the Municipal Budget Law.

21 Q. Are you aware of town's ability to
22 invest their funds through instrumentalities of
23 the state?

1 A. Yes.

2 Q. And what are those instrumentalities
3 called?

4 A. It's in the statute, and it's a
5 public -- I can't tell you what the name of it is,
6 but the answer is yes, I know that there's an
7 investment tool available.

8 Q. So towns don't have to rely on the
9 investment expertise of the newly elected
10 treasurer, they can invest through whatever this
11 is called?

12 A. Yes.

13 Q. This state investment?

14 A. Yes.

15 MR. VOLINSKY: Can I have just a
16 moment?

17 I'm finished. Thank you.

18 THE PRESIDING OFFICER: Thank you,
19 Mr. Volinsky. Anything further, Mr. Siracusa
20 Hillman.

21 MR. HILLMAN: Not from me, but from
22 Mr. Saturley.

23 THE PRESIDING OFFICER: I'm sorry.

1 Mr. Saturley, go ahead.

2 DIRECT EXAMINATION

3 BY MR. SATURLEY

4 Q. Good afternoon, Mr. Loughlin.

5 A. Good afternoon.

6 Q. Mr. Volinsky gave you a hypothetical, a
7 snowplower hypothetical, that the snowplower gets
8 paid a certain number of times based on what he
9 does or doesn't do. You heard that?

10 A. Yes, I do.

11 Q. And you answered some questions from
12 him based on that hypothetical. Is that how you
13 understand the municipalities that you advise; is
14 that how they're thinking about the contract they
15 sign when they purchase insurance?

16 A. No, it's not.

17 Q. Is that the type of hypothetical you
18 had in mind, or were you looking to the way they
19 actually purchase insurance when you arrived at
20 your opinion?

21 A. I'm thinking in the way that they
22 actually go out and buy an insurance policy.

23 Q. And so knowing how they actually go out

1 and buy an insurance policy, that's how you
2 developed your opinion in this case?

3 A. Yes.

4 Q. And you have seen the amended petition?

5 A. Yes, I have.

6 Q. And you understand the bureau's
7 position with regards to its argument that there's
8 some violation of the Municipal Budget Law going
9 on?

10 A. I understand that's their position.

11 Q. And you don't agree?

12 A. I do not agree.

13 Q. And your opinions have been expressed
14 today and they're contained in your opinion
15 letter?

16 A. Yes, they are.

17 MR. SATURLEY: Thank you very much.

18 THE PRESIDING OFFICER: Mr. Howard,
19 anything?

20 MR. HOWARD: No, thank you.

21 THE PRESIDING OFFICER: Any recross,
22 Mr. Volinsky?

23 MR. VOLINSKY: No, sir.

1 THE PRESIDING OFFICER: Mr. Loughlin, I
2 have one, if you would bear with me. I've heard
3 your references in RSA 32 and 35 with respect to
4 towns, school districts, et cetera.

5 Would you provide to me some
6 information with respect to cities, as cities are
7 also members of the LGC as we know it. Are there
8 any similar restrictions or considerations?

9 THE WITNESS: I think that the
10 provisions concerning investments are similar for
11 cities. On the Municipal Budget Act it would not
12 apply to cities, and I think that you can live in
13 a city or work in a city, as I did for a number of
14 years, and never deal with the Municipal Budget
15 Act, whereas in towns it's very active, you know,
16 budget committees and whatever. So that law
17 doesn't apply, but the investments provisions of
18 35 would -- would apply to investments by cities.

19 THE PRESIDING OFFICER: All right. And
20 from your experience in counseling municipality --
21 I'm sorry, cities -- is it your experience that
22 they do carry monies from year to year, or from
23 budget cycle to budget cycle, in several different

1 types of funds?

2 THE WITNESS: In what essentially
3 are -- are nonlapsing funds, yes.

4 THE PRESIDING OFFICER: Okay. Thank
5 you. If I haven't stirred up anything -- I have
6 this time, unfortunately. Please, Mr. Volinsky,
7 go ahead.

8 MR. VOLINSKY: Very briefly on this
9 last point.

10 RECROSS-EXAMINATION

11 BY MR. VOLINSKY:

12 Q. Cities, although not bound by the
13 Municipal Budget Act, also budget on an annual
14 basis, do they not?

15 A. Yes, they do.

16 Q. And it's called something different in
17 each city under their particular charters, but
18 they have mechanisms equivalent to nonlapsing
19 funds in their budgeting, do they not?

20 A. Yes.

21 Q. And so absent use of a nonlapsing fund,
22 the cities have the same requirements to raise and
23 spend monies in an annual budget cycle, right?

1 A. Yes.

2 THE PRESIDING OFFICER: Mr. Siracusa
3 Hillman?

4 MR. HILLMAN: No further questions.

5 THE PRESIDING OFFICER: Very good.
6 Seeing no further -- I'm sorry, Mr. Saturley,
7 anything?

8 MR. SATURLEY: No.

9 THE PRESIDING OFFICER: Okay, seeing
10 nothing further, thank you, Mr. Loughlin for your
11 information this afternoon. It's helped me, if
12 you will, as the fact finder, and that I'm sorry
13 that we weren't able to get you on yesterday.
14 That does it for today. We're in recess until
15 nine o'clock tomorrow morning. See you then.

16 (Whereupon at 5:42 p.m. the
17 proceedings were recessed,
18 to reconvene on Thursday,
19 May 10, at 9:00 a.m.)

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22

23

1 C E R T I F I C A T E

2 I, Pamela J. Carle, Licensed Shorthand Reporter,
3 Registered Professional Reporter, and Certified
4 Realtime Reporter, do hereby certify that I reported
5 in machine shorthand the proceedings had at the
6 taking of the above-entitled hearing, held on the 9th
7 day of May 2012, and that the foregoing is a true,
8 complete, and accurate transcript of said proceedings
9 as appears from my stenographic notes so taken to the
10 best of my ability, and transcribed under my personal
11 direction.

12 I further certify that I am a disinterested person
13 in the event or outcome of this cause of action.

14 THE FOREGOING CERTIFICATION OF THIS TRANSCRIPT DOES
15 NOT APPLY TO ANY REPRODUCTION OF THE SAME BY ANY
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17 DIRECTION OF THE CERTIFYING COURT REPORTER.

18 IN WITNESS WHEREOF, I subscribe my hand and affix
19 my Certified Shorthand Reporter seal this 23rd day of
20 May, 2012.

21

22

23

PAMELA J. CARLE, LCR, RPR, CRR